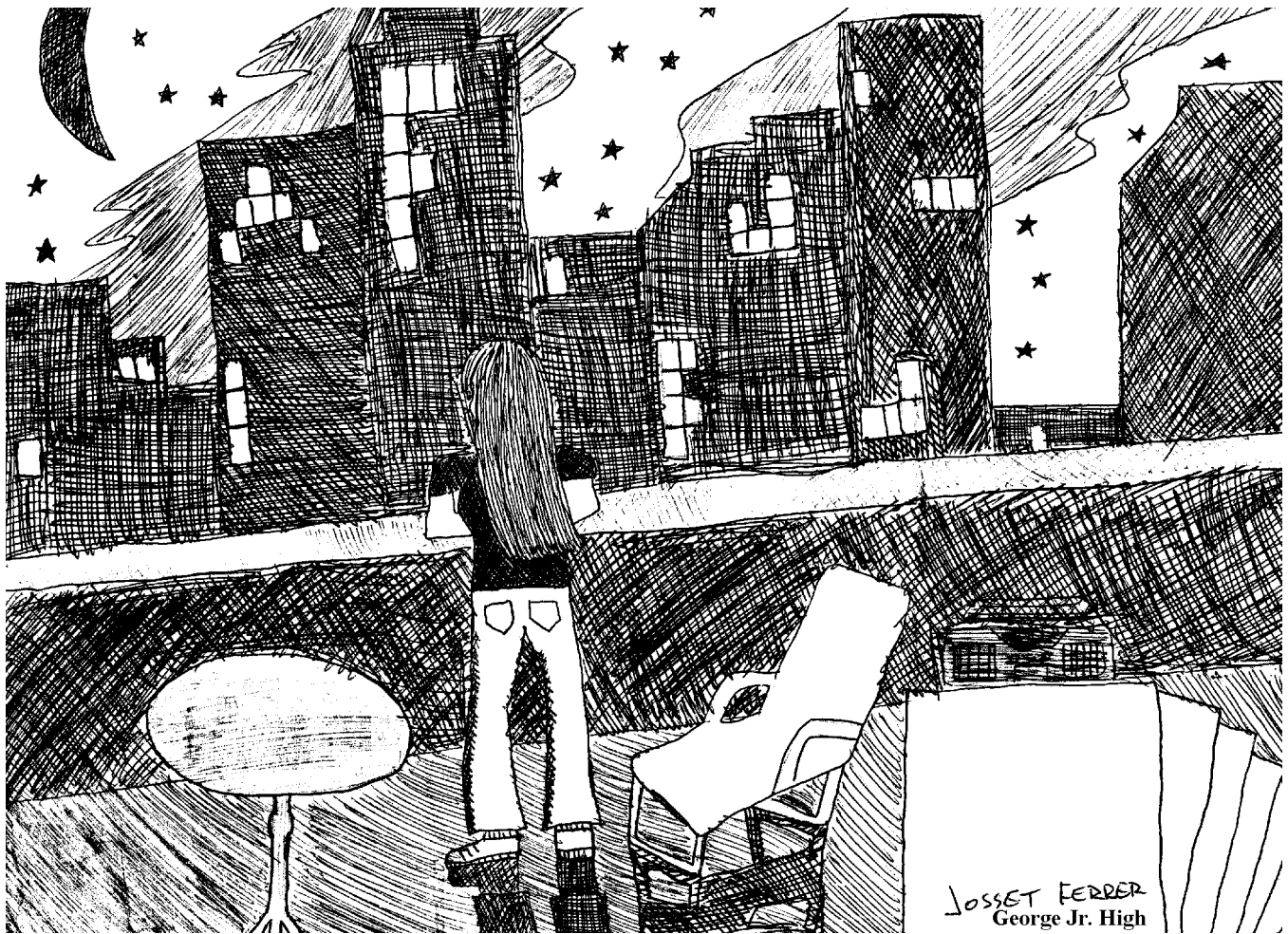

TEXAS REGISTER

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School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
<http://www.sos.state.tx.us/texreg>

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is <http://www.oag.state.tx.us>. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site.
<http://www.state.tx.us/Government>

...

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for January 18, 2005

Appointed to be Texas Secretary of State during the term of office of this Governor, J. Roger Williams of Weatherford. Mr. Williams is replacing Geoffrey S. Connor who resigned.

Appointed to Judge of the 57th Judicial District Court, Bexar County, effective February 1, 2005, until the next General Election and until his successor shall be duly elected and qualified, Joe Frazier Brown, Jr. of San Antonio. Mr. Brown is replacing Judge Pat Boone who resigned.

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2009, Ben C. Mazzara of Big Spring (replacing Moira Reinhardt of Fort Worth who is deceased).

Rick Perry, Governor

TRD-200500241



Executive Order

RP 39

Relating to the immediate creation a Division of Investigations within the Department of Family and Protective Services by the Health and Human Services Commission.

WHEREAS, government has no greater responsibility than ensuring the safety of its citizens, especially the safety of its children; and

WHEREAS, as Governor, I issued Executive Order RP-35 on July 2, 2004, calling for a systemic review of the Child Protective Services program by the Health and Human Services Commission (H.H.S.C.) in response to concerns that the Child Protective Services (C.P.S.) program was failing to protect abused and neglected children; and

WHEREAS, the H.H.S.C. Office of Inspector General's findings, policy workgroups, stakeholder forums, and an employee survey all concluded that:

- the C.P.S. program is not sufficiently focused on its core function of investigating allegations of abuse and neglect to protect children;
- the integration of policy development, management, and direct practice for investigations with all other C.P.S. services in the state office and throughout the regions limits the focus and resources available to deal with emergent investigation problems and needed reform;

- investigative caseworkers are working under a chain of command that is unable to assist them with making good decisions about their investigations; and

WHEREAS, Child Protective Services investigations are critical in determining whether child abuse or neglect has occurred and in protecting children from harm; and

WHEREAS, upon completion of that review, the Office of Inspector General found that in more than half of the investigations where action was needed caseworkers either failed to maintain contact with the child, failed to review the case with their supervisor for appropriate direction, or failed to provide all needed services to children; and

WHEREAS, failed investigations have left children in dangerous situations and contributed to a number child deaths;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas as the Chief Executive Officer, do hereby order the following:

Creation. Health and Human Services Commission shall immediately create a Division of Investigations within the Department of Family and Protective Services (D.F.P.S.) to place strong policy and management emphasis upon improved investigation methodologies.

Responsibilities. The Division of Investigations shall:

- Receive, screen, and investigate reports of abuse and neglect, and
- Refer families and children that need further services to appropriate D.F.P.S. or private sector providers in their communities.

Administration. Department of Family and Protective Services shall hire a director who has a strong background in forensic investigation and law enforcement to manage the C.P.S. Division of Investigations.

This executive order supersedes all previous orders in conflict or inconsistent with its terms and shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 6th day of January, 2005.

Rick Perry, Governor

TRD-200500225



THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0307-GA

Requestor:

Mr. James Chastain, President

Bandera County River Authority and Groundwater District

Post Office Box 177

Bandera, Texas 78003

Re: Conflict of interest questions regarding board members of a river authority and groundwater district (Request No. 0307-GA)

Briefs requested by February 13, 2005

RQ-0308-GA

Requestor:

The Honorable Ismael "Kino" Flores

Chair, Committee on Licensing and Administrative Procedure

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether Civil Practice and Remedies Code section 75.002, which limits a landowner's premises liability, limits the premises liability of the state, a municipality, or county for damages caused by bicycles on land that such entities own, operate, or maintain (Request No. 0308-GA)

Briefs requested by February 18, 2005

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at (512) 463-2110.

TRD-200500250

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: January 19, 2005

◆ ◆ ◆

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Ethics Advisory Opinion

EAO-460. The Texas Ethics Commission has been asked to consider the meaning of the phrase "not reimbursable with public money" in section 251.001(9) of the Election Code. The specific question is whether a school board member's expenditures for tickets to school events are "reimbursable with public funds" if the board member purchases tickets rather than using the free pass provided to school board members. (AOR-520)

SUMMARY

Expenditures for tickets are not "reimbursable with public funds" in a situation in which the payor chooses to make the expenditures rather than to use a free pass issued by a government body.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following

statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 36, Penal Code; and (8) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200500240

Sarah Woelk

General Counsel

Texas Ethics Commission

Filed: January 19, 2005

◆ ◆ ◆

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 301. GENERAL PROVISIONS

10 TAC §301.1

The Texas Residential Construction Commission (the "commission") proposes an amendment to §301.1, concerning definitions used in construing agency rules promulgated to implement the Texas Residential Construction Commission Act (the Act), Title 16, Property Code. The amendment is proposed to implement legislation enacted during the 78th Legislative Session, Regular Session, House Bill 730 (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01), including Title 16, Property Code. Property Code §408.001 provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code.

Section 301.1, relating to definitions, defines words and terms that are used in Part 7 of Title 10 of the Texas Administrative Code. Amendment to the section is necessary to add definitions for the terms "construction activity" and "structural failure" and to revise the definition of "statutory warranty". Pursuant to §430.001 of the Act, the commission is required to adopt warranty and building and performance standards in accordance with the International Residential Code of 2000. The terms added to this section by this amendment will be used in agency rules including the warranty and building and performance standards sections adopted by the commission.

Stephen D. Thomas, Executive Director, has determined that for each year of the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Thomas has also determined that for each year of the first five-year period the proposed rule is in effect the public will benefit from the clarity provided by the adoption of definitions that assist interested persons in interpreting commission-promulgated rules.

Mr. Thomas has also determined that there will be no effect on individuals or large, small and micro-businesses as a result of the adoption of the proposed rule.

Mr. Thomas has also determined that for each year of the first five-year period the proposed rule is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act. §2001.022.

Interested persons may submit written comments (12 copies) on the proposed rule to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711. Comments may be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Proposed Definitions Amendment" in the subject line. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed rules in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed rule.

The amendment is proposed to implement legislation enacted during the 78th Legislative Session, Regular Session, House Bill 730 (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01), including Title 16, Property Code. Section 408.001 of the Property Code provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code.

The statutory provisions affected by the proposal are those set forth in the Title 16, Property Code and House Bill 730, 78th Legislature, R.S.

No other statutes, articles, or codes are affected by the proposal.

§301.1. Definitions.

The following words and terms, when used in rules promulgated by the commission, shall have the following meanings unless the context of the rule clearly indicates otherwise.

(1) Accrual or accrued--when a homeowner first discovers a condition in the home that is a potential construction defect.

(2) Act--the Texas Residential Construction Commission Act, Title 16, Property Code.

(3) Affiliate--a person who directly or indirectly through one or more Intermediaries controls, is controlled by or is under common control with a specified person.

(4) Builder--

(A) any business entity or individual who, for a fixed price, commission, fee, wage, or other compensation, constructs or supervises or manages the construction of:

(i) a new home;

(ii) a material improvement to a home, other than an improvement solely to replace or repair a roof of an existing home; or

(iii) an improvement to the interior of an existing home when the cost of the work exceeds \$20,000.

(B) When required by the context of the rule, the term may include:

(i) an owner, officer, director, shareholder, partner, affiliate or employee of the builder;

(ii) a risk retention group governed by §21.54, Insurance Code, that insures all or any part of builder's liability for the cost to repair a residential construction defect; and

(iii) a third-party warranty company and its administrator.

(5) Building and performance standards--those standards that apply to home construction built pursuant to a transaction governed by the Act.

(6) Commission--the Texas Residential Construction Commission.

(7) Construction Activities--actions taken by the builder or at the direction of the builder by an employee, agent, contractor or subcontractor of the builder during the process of building the home or the improvement to the home.

(8) [(7)] Construction defect--

(A) the failure of the design, construction or repair of a home, an alteration of or a repair, addition or improvement to an existing home, or an appurtenance to a home to meet the applicable warranty and building and performance standards during the applicable warranty period; and

(B) any physical damage to the home, an appurtenance to the home, or real property on which the home or appurtenance is affixed that is proximately caused by that failure.

(9) [(8)] Cosmetic deficiency--any marred, scuffed, scratched or smudged painted surface or countertop; chipped or stained porcelain, tile, grout, or fiberglass; chipped surfaces of appliances or plumbing fixtures; torn or defective window or door screens; marred, smudged, scratched or stained cabinet surfaces or finishes; or, broken, chipped or scratched glass, window or mirror.

(10) [(9)] Dwelling unit--a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

(11) [(10)] Executive Director--the individual employed by the commission as the chief executive for the agency or any person to whom the Executive Director has delegated the authority to act on behalf of the Executive Director.

(12) [(11)] Home--the real property, improvements and appurtenances thereto for a single-family residential dwelling unit or duplex.

(13) [(12)] ICC--the International Code Council, Inc., currently located at 5203 Leesburg Pike, Suite 600, Falls Church, Virginia, 22041-3401, or at a subsequent address, and any successor organization that performs substantially the same functions that the ICC performs as of December 1, 2003.

(14) [(13)] Improvement to the interior of an existing home when the cost of the work exceeds \$20,000--any modification to the interior living space of a home, which includes the addition or installation of permanent fixtures inside the home, pursuant to an agreement for work for total consideration in excess of \$20,000 to be paid by a homeowner to a single builder.

(15) [(14)] Living space--the enclosed area in a home that is suitable for year-round residential use.

(16) [(15)] Local building official--the agency or department of a municipality, county or other local political subdivision with authority to make inspections and to enforce the laws, ordinances, and regulations applicable to the construction, alteration, or repair of homes in that locality.

(17) [(16)] Material improvement--a modification to an existing home that either increases or decreases the home's total square footage of living space that also modifies the home's foundation, perimeter walls or roof. A material improvement does not include modifications to an existing home if the modifications are designed primarily to repair or replace the home's component parts.

(18) [(17)] Person--an individual, partnership, company, corporation, association, or any other legal entity, however organized.

(19) [(18)] Remodeler--any business entity or individual who, for a fixed price, commission, fee, wage, or other compensation, constructs or supervises or manages the construction of a material improvement to an existing home or an improvement to the interior of an existing home when the cost of the work exceeds \$20,000.

(20) [(19)] Single-family residential dwelling--a building that contains one or two dwelling units, including a townhouse, complete with independent living facilities for one or more persons suitable for one household, including permanent provisions for living, sleeping, eating, cooking and sanitation.

(21) [(20)] State inspector--a person employed by the commission whose duties include serving as a member of an appellate panel to:

(A) review the recommendations of third-party inspectors;

(B) provide consultation to third-party inspectors; and

(C) administer the state-sponsored inspection and dispute resolution process.

(22) [(21)] Statutory warranty--the legal requirement that the component parts of a home perform to the building and performance standards applicable to the construction for the number of years as set in statute, to wit:

(A) one year for workmanship and materials;

(B) two years for plumbing, electrical, heating, and air conditioning delivery systems; and

(C) ten years for major structural components of the home; and

(D) ten years for the warranty of habitability.

(23) Structural failure--non-compliance with the commission-adopted performance standards for major structural components.

(24) [(22)] Third-party inspector--a person approved by the commission to conduct an objective home inspection and prepare a report of that inspection as part of the state-sponsored inspection and dispute resolution process.

(25) [(23)] Townhouse--a single-family dwelling unit constructed in a group of three or more attached dwelling units in which each unit extends from foundation to roof and with open space on at least two sides not more than three stories in height with a separate means of ingress and egress.

(26) [(24)] Transaction governed by the Act--an agreement between a homeowner and a builder:

(A) for the construction of a new home; or

(B) for construction on an existing home that is:

(i) a material improvement to the home other than an improvement solely to replace or repair the roof; or

(ii) an improvement to the interior of the home when the cost paid for the work exceeds \$20,000.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 14, 2005.

TRD-200500185

Susan Durso

General Counsel

Texas Residential Construction Commission

Earliest possible date of adoption: February 27, 2005

For further information, please call: (512) 475-5095



CHAPTER 303. REGISTRATION

SUBCHAPTER D. THIRD-PARTY WARRANTY COMPANIES

10 TAC §§303.250 - 303.266

The Texas Residential Construction Commission ("commission") proposes new, Chapter 303, Subchapter D, §§303.250-303.266, relating to Third-party Warranty Companies. The new subchapter outlines the commission's eligibility requirements and application procedures for entities that wish to provide, for remuneration, third-party warranties on behalf of builders in Texas.

The sections are proposed to implement House Bill 730 (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01). The new sections are proposed under Property Code §408.001, which provides generally authority for the commission to adopt rules necessary for the implementation of Title 16 and Chapter 430 which requires the commission to establish rules and procedures for the approval of third-party warranty companies.

Stephen D. Thomas, Executive Director, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for local governments as a result of enforcing or administering the proposed sections. There will be a minor impact on state government as related to the fees received for registration.

Mr. Thomas has also determined that for each year of the first five-year period the proposed sections are in effect the public will benefit from receiving assurance that only reputable third-party warranty companies will be permitted to assume the warranty obligations of a builder.

Mr. Thomas has also determined that there will be no effect on large, small and micro-businesses as a result of the adoption of the proposed rule. However, there may be a minimal financial impact on persons who apply for registration due to application and renewal fees.

Mr. Thomas has also determined that for each year of the first five-year period the proposed sections are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

Interested persons may submit written comments (12 copies) on the proposed rule to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144,

Austin, Texas 78711. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed sections in the *Texas Register*. Comments received after that date will not be considered. Comments should be organized in a manner consistent with the organization of the proposed rule. Comments may be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Proposed Third-party Warranty Companies Rule" in the subject line. Comments submitted electronically to another electronic address or that do not include "Proposed Third-party Warranty Companies Rule" in the subject line may not be considered.

The new sections are proposed to implement new legislation enacted during the 78th Legislative Session, Regular Session, House Bill 730 (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01), including Title 16, Property Code and specifically, Property Code ch. 430.

§303.250. Builder's Election.

A builder that elects to provide warranty coverage for warranties as set forth in Chapter 304 of this title to a homeowner through a third-party warranty company must use a third-party warranty company approved by the commission under this subchapter.

§303.251. Effective Transfer of Builder Liability.

To effectively transfer a builder's liability under a warranty as set forth in Chapter 304 of this title to an approved third-party warranty company, the third-party warranty company must agree to:

(1) fully accept, without reservation, a builder's warranty obligations created by the Act; and

(2) make full payment for or repair any construction defect determined to be covered by those warranties.

§303.252. Warranties.

(a) An approved third-party warranty company:

(1) may adopt warranties and building and performance standards in addition to those warranties and building and performance standards set forth in Chapter 304 of this title;

(2) may not reduce the limited statutory warranty and building and performance standards as set forth in Chapter 304 of this title.

(b) The commission may not require a third-party warranty company to provide a warranty of habitability

§303.253. Approval Required.

A person that seeks to provide third-party warranties on behalf of a builder under this subchapter must obtain a certificate of registration denoting approval from the commission.

§303.254. Eligibility.

(a) An applicant seeking approval under this subchapter must demonstrate to the commission in its application that each designated agent for the applicant is at least 18 years of age and a citizen of the United States or a lawfully admitted alien and must demonstrate to the satisfaction of the commission that the applicant is honest, trustworthy and has integrity; and

(b) Each applicant must demonstrate that the applicant:

(1) is an entity that has operated warranty programs in this state for at least five years; or

(2) is a company whose performance is insured by an insurance company authorized to engage in the business of insurance in the State of Texas; or

(3) is an insurer as defined under §4001.003 of the Texas Insurance Code that insures the warranty obligations of a builder under the Act as implemented under Chapter 304 of this title.

§303.255. Process.

(a) An applicant seeking commission approval under this subchapter in order to provide a third-party warranty to a builder must submit to the commission:

(1) a completed application on a commission-prescribed form, verified by an officer or other authorized representative of the applicant;

(2) a sample copy of the warranty contract to be made with builders or remodelers;

(3) a copy of the applicant's residential inspection procedures for post-construction inspections; and

(4) the appropriate fee.

(b) The application for approval must contain a request for information from the designated agent that is sufficient for the commission to conduct a criminal background check to determine the applicant's and designated agent's eligibility for approval under the Act.

(c) The designated agent shall provide the agent's correct social security number as required by the Texas Family Code, Section 231.302.

(d) In reviewing an application to determine if an applicant is eligible for approval under this subchapter, the commission shall consider whether the designated agent has a criminal history and if so:

(1) the nature and seriousness of any crimes to which the designated agent has pled guilty or pled no contest, or for which the designated agent has a prior conviction or convictions, including whether such a crime involves moral turpitude;

(2) the extent to which acting as a approved warranty company might offer the designated agent an opportunity to engage in further criminal activity of a same or similar nature as that for which the applicant has a prior conviction;

(3) the extent and nature of the designated agent's past criminal activity;

(4) the age of the designated agent when any criminal activity discovered occurred;

(5) the remoteness in time between the submission of the application and the date of the designated agent's last criminal conviction;

(6) the designated agent's overall work history in relation to the dates of any criminal convictions;

(7) evidence of the designated agent's successful rehabilitation efforts while incarcerated or after release, including but not limited to, restitution to the victim, completion of probationary requirements and completion of community service; and

(8) other evidence of the applicant's eligibility to serve as an approved warranty company, as requested by the commission.

(e) For each applicant seeking approval under this subchapter, the commission shall publish a notice of application in the *Texas Register*. The commission shall accept written public comment on each application submitted to the commission for a period of twenty-one days following the date of publication of the notice and shall consider the comments received during the review of the application.

(f) An applicant shall respond to a written request from the commission for further information as directed during the review of the application in order to complete the application process. Failure to respond to the commission as directed may result in the administrative withdrawal of the application and forfeiture of the application fee.

(g) An applicant may submit an application for registration only once during any calendar year.

§303.256. Designated Agent.

(a) To be eligible to receive a certificate of registration under this subchapter an applicant must designate an individual as a designated agent.

(b) A corporation must designate one of its corporate officers as the designated agent.

(c) A limited liability company must designate one of its managers as the designated agent.

(d) A partnership, limited partnership or limited liability partnership must designate one of its managing partners as the designated agent or, if there are no individuals serving as a managing partner, a partnership, limited partnership or limited liability partnership must designate an individual officer from among its managing partners as the designated agent.

§303.257. Information regarding Past Criminal History.

(a) The designated agent must disclose on the application for approval:

(1) whether the designated agent has entered a plea of guilty or nolo contendere (no contest) to any felony charge or to any misdemeanor charge for a crime involving moral turpitude; or

(2) whether the designated agent has been convicted of any felony charge or of a misdemeanor charge for a crime involving moral turpitude and that the time for appeal of the conviction has elapsed or that the conviction was affirmed on appeal.

(b) The commission shall conduct a criminal background check of each designated agent and may conduct a criminal background check on any other person responsible for the application if the commission determines it necessary to further the purposes of the Act.

(c) Any information obtained from a designated agent as a result of the criminal background check that is not a public record at the time the commission obtains the information shall be deemed confidential. The commission may not release, or otherwise disclose, the confidential information except pursuant to a court order, subpoena or with the written consent of the designated agent.

(d) For purposes of this section, a designated agent who has received a deferred adjudication for any felony charge or for any misdemeanor charge for a crime involving moral turpitude shall disclose that charge on the application, unless that information has been sealed by court order.

§303.258. List of Registered Third-party Warranty Companies.

(a) The commission shall maintain a list of third-party warranty companies that have received a certificate of approval from the commission under this subchapter.

(b) The commission shall publish the listing on its website and shall provide the listing to the public upon request.

§303.259. Denial of an Application.

(a) The commission shall deny an application for approval if the commission determines that the applicant is not qualified or if approval of the applicant otherwise does not serve the public interest.

(b) If the commission denies an application, the commission shall provide written notice to the designated agent not later than the fifteenth day after the expiration of the comment period.

§303.260. Revocation and Suspension.

(a) The commission may revoke or suspend a certificate of registration if the commission determines that the registrant is subject to disciplinary action pursuant to §418.001 of the Act.

(b) If a registration is revoked, the commission shall provide written notice to the registrant not later than the fifth day after the revocation becomes effective.

(c) The commission shall state the reason(s) for the revocation in its written notice to the former registrant.

§303.261. Appeal from Denial, Revocation or Suspension.

(a) An applicant may file a written request for a hearing to appeal the denial of its certificate of registration not later than thirty days from the date of receipt of the denial notification.

(b) A registrant may file a written request for a hearing to appeal the revocation or suspension of its certificate of registration not later than thirty days from the date of receipt of the revocation or suspension notification.

(c) The registrant whose registration has been revoked or suspended may file with the Executive Director, not later than thirty days from the date of receipt of the revocation or suspension notification, a request for a stay of the execution of the revocation or suspension until the commission has issued a final decision.

(d) A hearing for an appeal under this subsection will be conducted in accordance with the Administrative Procedures Act, Government Code, Chapter 2001 and procedures set forth in Chapter 305 of this title.

§303.262. Material Change in Information.

A third-party warranty company that has been approved under this subchapter shall report to the commission, in writing, any material change in the information provided to the commission under §303.255 of this subchapter or as otherwise requested by the commission in providing approval pursuant to Property Code Chapter 430 within thirty days of the change.

§303.263. Renewal.

(a) A third-party warranty company that has been approved by the commission under this subchapter may submit an application for renewal of the certification not later than thirty days prior to the expiration of the effective date of the certificate as established by the commission.

(b) A third-party warranty company seeking renewal shall submit a renewal application on a commission-prescribed form accompanied by the appropriate fee as established by the commission.

§303.264. Inspection Procedures.

(a) The commission shall provide applicants a copy of commission-adopted inspection procedures for use by the third-party inspectors appointed to conduct home inspections for the state-sponsored inspection and dispute resolution process.

(b) An approved third-party warranty company must use substantially the same home inspection procedures to determine the existence of a defect as provided in subsection (a) of this section.

§303.265. Liability for Personal Injury or Damage to Personal Property.

An approved third-party warranty company shall not assume liability for personal injuries or damage to personal property for which a builder would otherwise be liable under the law of this State.

§303.266. Administrators for Third-Party Warranty Companies.

A person whose sole responsibility to an approved third-party warranty company is to administer a warranty shall not be liable for any damages resulting from a construction defect or for repairs covered by a warranty as set forth in Chapter 304 of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 14, 2005.

TRD-200500186

Susan Durso

General Counsel

Texas Residential Construction Commission

Earliest possible date of adoption: February 27, 2005

For further information, please call: (512) 475-0595

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TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §501.72

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.72, concerning Contingency Fees.

The amendment to §501.72 will define the term "testifying accounting expert." By adoption of an interpretive comment, the amendment clarifies how a "consulting accounting expert" may become a "testifying accounting expert" and, further, that an accounting expert may not accept contingent fees for part of an engagement and a set fee for part of the same engagement.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect, the public benefits expected as a result of adoption of the proposed amendment will be improvement in the public understanding of how to determine whether an accounting expert is performing as a testifying accounting expert or a consulting accounting expert; furthermore, that testifying accounting experts are not permitted to accept contingent fee arrangements, either in whole or in part for an engagement.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on February 25, 2005. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the determination of whether an accounting expert is consulting or testifying is based on the factual circumstances of that expert's activities and the procedural rules of the forum in which the expert's conclusions are to be used. The proposed amendment places no greater burden on the small business choosing to engage an accounting expert but merely delineates when a consulting expert becomes a testifying expert.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.72. Contingency Fees.

(a) - (b) (No change.)

(c) A certificate or registration holder shall not perform an engagement as a testifying accounting expert for a contingent fee. A testifying accounting expert is one that at any time during the preceding becomes subject to disclosure and discovery under the procedural rules of the forum where the matter for which his services were engaged is pending.

(d) - (e) (No change.)

(f) Interpretive Comment: A consulting accounting expert may become a testifying accounting expert when the client for whom he is working makes his work available to a testifying expert. A consulting accounting expert who is working on a contingent fee basis should work closely with his client to insure that he does not inadvertently become a testifying expert through the actions of his client. An accounting expert may not accept a contingent fee for part of an engagement and a set fee for part of the same engagement. A consulting accounting expert who becomes a testifying expert may not accept a contingent fee for the part of his work done as a consultant, but must be compensated on a set fee basis for all of the

work performed on the same engagement. A consulting accounting expert who enters into a contingent fee engagement should reach an agreement, preferably in writing, with the client as to how he will be compensated should he become a testifying expert prior to beginning the engagement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2005.

TRD-200500143

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: February 27, 2005

For further information, please call: (512) 305-7848



CHAPTER 505. THE BOARD

22 TAC §505.10

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.10 concerning Board Committees.

The amendment to §505.10 will clarify the status of each of the Board's standing committees as either policy-making or working; further, that committees designated as working committees serve to make recommendations to the board's policy-making committees concerning changes in the rules, opinions, and policies related to the functional area supervised by the working committee. The amendment further clarifies that the Executive Committee shall also be the board's audit committee; and that the technical standards review committee and the major case enforcement committee are given the responsibility to make recommendations to the Board's policy-making committees concerning proposal changes in Board rules, opinions and policy related to technical standards and major case enforcement.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect, the public benefits expected as a result of adoption of the proposed amendment will be: clarification of each standing committee's status as either a working or policy-making committee; clarification that the technical standards review committee and major case enforcement committee are given the responsibility to make recommendations to the Board's policy-making committees concerning proposal changes in Board rules, opinions and policy related to technical standards and major case enforcement; and finally, this amendment will further ensure that, in accordance with the Public Accountancy Act, only Board members serve on policy-making committees.

The probable economic cost to persons required to comply with the amendment will be zero in that persons serving on the affected committees will suffer no increased costs.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on February 25, 2005. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the proposed amendment does not have any adverse economic effects.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §901.1525 of the Public Accountancy Act which authorizes the Board to have working committees and policy-making committees.

No other article, statute or code is affected by this proposed amendment.

§505.10. Board Committees.

(a) - (d) (No change.)

(e) Standing committee structure and charge to committees. The standing committees shall consist of policy-making committees and working committees comprised of the following individuals and shall be charged with the following responsibilities.

(1) The executive committee shall be a policy-making committee comprised of the board's presiding officer, assistant presiding officer, secretary, treasurer, immediate past presiding officer of the board if still serving on the board, and at least one other officer elected by the board. The Executive Committee shall also be the board's audit committee. The executive committee may act on behalf of the full board in matters of urgency, or when a meeting of the full board is not feasible; the executive committee's actions are subject to full board ratification at its next regularly scheduled meeting. The functions of the executive committee shall be to advise, consult with, and make recommendations to the board concerning matters requested by the board's presiding officer, including:

(A) - (H) (No change.)

(2) The continuing professional education committee shall be a working committee comprised of at least two board members, one

of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) (No change.)

~~{(B) proposed changes in board rules, opinions, and policies related to the mandatory continuing professional education program as it relates to licensees and to relations with sponsors of continuing professional education;}~~

~~(B) [(C)] investigations of sponsor compliance with the terms of the sponsor agreements, including the related recordkeeping requirements;~~

~~(C) [(D)] the results of monitoring continuing professional education courses for the purpose of evaluating the facilities, course content as presented, and the adequacy of the course presenter(s); and~~

~~(D) [(E)] any significant deficiencies observed in carrying out subparagraphs (B) [(C)] and (C) [(D)] of this paragraph; and~~

(E) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to the mandatory continuing professional education program as it relates to licensees and to relations with sponsors of continuing professional education.

(3) The qualifications committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) - (D) (No change.)

(E) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the qualifications process.

(4) The licensing committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) - (B) (No change.)

(C) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies as they relate to the licensing process.

(5) The behavioral enforcement committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall:

(A) - (B) (No change.)

(C) make recommendations to the board's policy-making committees (the executive committee and the rules committee) [board] concerning proposed changes in board rules, opinions, and policies related to the behavioral restraints of the rules and the Act.

(6) The technical standards review committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least three non-board members who shall serve in an advisory capacity. The committee shall:

(A) study complaints from any source involving suspected violations of the technical standards included in the rules and shall make recommendations to the board as appropriate; ~~and~~

(B) follow up on board orders to insure that certificate or registration holders and others adhere to sanctions prescribed by or agreements with the board; and[-]

(C) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to enforcement of technical standards.

(7) The peer review committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall:

(A) - (B) (No change.)

(C) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning ~~[board with regard to]~~ proposed changes in board rules, opinions, and policies relating to the peer ~~[quality]~~ review program.

(8) The board rules committee shall be a policy-making committee comprised of at least three board members, one of whom shall serve as chair. The committee shall make recommendations to the board concerning the board's rules, opinions and policies ~~[and propose changes regarding board rules]~~. All working committees shall refer ~~[endeavor to consult with the board rules committee concerning]~~ proposed changes to the board's rules, opinions and policies to the rules committee for consideration for recommendation to the board ~~[rules]~~.

(9) The major case enforcement committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. At least one committee member shall be a public member of the board. The committee shall make recommendations to the board regarding legal matters on litigation or potential litigation, and other major cases to which the board is a party. The committee shall make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to major case enforcement. The committee shall have the authority to act on behalf of the board in instances where disclosure of facts to the full board could cause the board's objectivity to be jeopardized, subject to final approval by the board. The board shall have ~~[sole]~~ authority to determine whether cases shall be heard by the major case enforcement committee or other enforcement committee.

(10) The peer assistance oversight committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall oversee the peer assistance program administered by the Texas Society of Certified Public Accountants as required under the Texas Health and Safety Code, Chapter 467.001(B), and insure that the minimum criteria as set out by the Texas Commission on Alcohol and Drug Abuse are met. It shall make recommendations to the board and the TSCPA regarding modifications to the program and, if warranted, refer cases to other board committees for consideration of disciplinary or remedial action by the board. The committee shall report to the board on a quarterly basis, by case number, on the status of the program.

(11) The constructive enforcement committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by non-board CPA members who shall also serve as investigators. At least one Committee member shall

be a public member of the board. The committee shall approve the constructive enforcement program, coordinate its activities with board committees and staff, and supervise the training of committee members. A staff attorney of the board shall supervise the day to day administration of the constructive enforcement program and activities of the committee's non-board members on behalf of the committee chairman. The committee shall:

(A) - (D) (No change.)

(E) make recommendations to the board's policy-making committees (the executive committee and the rules committee) ~~[board]~~ concerning proposed changes in board rules, opinions, and policies relating to the constructive enforcement program.

(f) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2005.

TRD-200500144

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: February 27, 2005

For further information, please call: (512) 305-7848



22 TAC §505.12

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.12 concerning Enforcement Committees.

The amendment to §505.12 will delete "Member Recusals" from the title of the rule, delete subsection (b), which states that a member of an enforcement committee may not participate in discussions before the committee in which the member has a personal or financial interest; re-letter existing subsection (a) to become new subsection (b); and, adopt new subsection (a), providing that the Board's behavioral enforcement committee, the technical standard's review committee, the major case enforcement committee and the constructive enforcement committee shall each be one of the board's enforcement committees.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect, the public benefits expected as a result of adoption of the proposed amendment will be: (1) clarification that the section defines Enforcement Committees (2) deletion of existing subsection (b) of Rule 505.12 in order that Rule 505.13,

clarifying that a member of any board committee may not participate in the discussion and may not vote on an issue before the committee in which the member has a personal or financial interest, may be adopted; (3) the re-lettering of existing subsection (a), stating that a member of the board and an enforcement committee shall recuse himself from any considered by that enforcement committee; and, (4) the enactment of new subsection (a) clarifying that the Board's behavioral enforcement committee, the technical standards review committee, the major case enforcement committee, and the constructive enforcement committee shall each be one of the board's enforcement committee. The result of this amendment will be greater protection of the public's interest in the event a member has a personal or financial interest in a matter before any of the Board's committees.

The probable economic cost to persons required to comply with the amendment will be zero. Persons required to comply with the amendment will incur no additional cost.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on February 25, 2005. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because small businesses are not currently affected by this rule and will come under no greater burden by its amendment.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§505.12. Enforcement Committees[Committee Member Recusals].

(a) The behavioral enforcement committee, technical standards review committee, major case enforcement committee and constructive enforcement committee shall each be one of the board's enforcement committees.

(b) [(a)] A member of the board and an enforcement committee shall recuse himself and take no part in the board's vote on the final disposition in any case considered by that enforcement committee.

[(b) A member of an enforcement committee may not participate in the discussion and may not vote on an issue before the committee in which the member has a personal or financial interest. Each committee member who is ineligible to participate in the disposition of an issue by reason of this subsection shall provide a concise, factual statement of the reason why the member is not participating prior to the commencement of discussion of that issue by the committee.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2005.

TRD-200500145

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: February 27, 2005

For further information, please call: (512) 305-7848



22 TAC §505.13

The Texas State Board of Public Accountancy (Board) proposes new rule §505.13 concerning Board Committee Member Recusals.

The new rule §505.13 will prohibit Board members from participating in the discussion of and voting on an issue before a Board committee in which the member has a personal or financial interest.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rule will be zero.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be less potential for conflict of interest allegations in the event a Board committee member has a personal or financial interest in a matter before the Board committee. The proposed rule will result in more transparent Board operations and greater disclosure to the public.

The probable economic cost to persons required to comply with the new rule will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on February 25, 2005. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333

Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because small businesses are not affected by the rule and there is no economic effect on small businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small business; if the new rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the new rule is to be adopted; and if the new rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the new rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§505.13. Board Committee Member Recusals.

A member of a board committee may not participate in the discussion and may not vote on an issue before the committee in which the member has a personal or financial interest. Each committee member who is ineligible to participate in the disposition of an issue by reason of this section shall provide a concise, factual statement of the reason why the member is not participating prior to the commencement of discussion of that issue by the committee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2005.

TRD-200500146

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 39. PUBLIC NOTICE

SUBCHAPTER M. PUBLIC NOTICE FOR RADIOACTIVE MATERIAL LICENSES

30 TAC §§39.703, 39.707, 39.709

The Texas Commission on Environmental Quality (commission) proposes amendments to §§39.703, 39.707, and 39.709.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

On September 24, 2003, the commission considered the petition for rulemaking that was filed by Newpark Resources, Inc. on August 5, 2003. The petitioner requested that the commission initiate rulemaking to allow commercial disposal of naturally occurring radioactive material (NORM) waste in Class I injection wells located at facilities at which the storage and processing of such material is licensed by the Texas Department of Health (TDH), Bureau of Radiation Control. TDH is the predecessor agency of the Department of State Health Services. The petitioner also requested amendments to the memorandum of understanding (MOU) with TDH to reflect that TDH is authorized to regulate the storage and processing of NORM waste that will be disposed of at a commercial NORM waste disposal facility.

The commission directed staff to initiate rulemaking for the licensing of commercial disposal of NORM waste streams from public water systems by injection into Class I injection wells. The commission decided that the MOU with TDH should not be amended as requested by the petitioner.

This rulemaking proposes amendments to the public notice requirements for radioactive material licenses and establishes notice requirements for license applications for commercial disposal of NORM waste authorized under 30 TAC Chapter 336, Subchapter K. A corresponding rulemaking that includes changes to Chapter 336, Radioactive Substance Rules is published in this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

Administrative and grammatical changes are proposed throughout the sections to bring the existing rule language into agreement with guidance provided in the Texas Legislative Council Drafting Manual, October 2002.

Section 39.703(b) is proposed to be amended to make the notice requirements of this section applicable to licenses issued under Chapter 336, Subchapter K, Commercial Disposal of Naturally Occurring Radioactive Material (NORM) Waste From Public Water Systems.

Section 39.707(a) is proposed to be amended to make the notice requirements of this section applicable to licenses issued under Chapter 336, Subchapter K.

Section 39.709(b) is proposed to be amended to make the notice requirements of this section applicable to licenses issued under Chapter 336, Subchapter K.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that, for the first five-year period that the proposed rules are in effect, no significant fiscal implications are anticipated for the agency, and no fiscal implications are expected for other units of state and local government as a result of administration or enforcement of the proposed rules.

The proposed rules would establish public notice requirements for entities wishing to obtain a license to commercially dispose of NORM waste by injection into Class I injection wells. The agency anticipates receiving at least one and perhaps as many as five of these types of applications. Some costs to the agency would be expected to process public comment on any draft licenses, and to fulfill other administrative requirements, though these costs are

not anticipated to be significant. These costs would be exclusive of any contested case hearing costs, if applicable.

State and local governments typically do not own or operate Class I injection wells that commercially dispose of NORM waste from public water systems, and therefore fiscal implications are not anticipated for state or local governments. If these types of facilities are owned or operated by units of government in the future, the costs for public notice requirements are expected to be the same as those identified in the PUBLIC BENEFITS AND COSTS section of this preamble.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated as a result of the proposed amendments will be that the public will be notified when entities seek a license to commercially dispose of NORM waste by injection into Class I injection wells.

No significant fiscal impact is expected to occur from these proposed amendments. The newspaper publication cost for required notices is estimated to be \$400 - \$600 for a newspaper with a small circulation. In a newspaper with a large circulation, the publication of a public notice is estimated to cost between \$1,100 - \$1,500. This estimate does not include any costs related to contested case hearings for this type of license application, as it is not known how many of the potential license applications would be subject to contested case hearings, if any. However, if applicable, these costs could be significant and would include attorney fees, expert witness fees, etc.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated as a result of implementation of the proposed rules for small or micro-businesses. The agency does not anticipate that small and micro-business would be applying for this type of license.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rules are not subject to §2001.0225 because they do not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The proposed amendments to Chapter 39 are part of the commission's rulemaking to authorize commercial disposal of NORM waste. The specific intent of the proposed rules is to allow commercial injection well disposal of NORM waste generated by public water systems. These rules will benefit public water systems by providing an additional disposal option for NORM waste generated from the treatment of water supplies. It is not anticipated

that the proposed rules will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rules would only apply to commercial Class I injection well disposal of NORM waste generated by public water systems. The proposed amendments to Chapter 39 are procedural changes that establish the public notice requirements for NORM waste disposal license applications. Therefore, the commission concludes that these proposed rules do not meet the definition of a major environmental rule.

Furthermore, the proposed rulemaking action does not meet any of the four applicability requirements listed in §2001.0225(a). Section 2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rules do not meet any of these applicability requirements. First, there are no applicable federal standards that these rules would address. Disposal of NORM waste is not subject to standards established by the Nuclear Regulatory Commission or the United States Environmental Protection Agency (EPA). Second, the proposed rules do not exceed an express requirement of state law. Texas Health and Safety Code (THSC), Chapter 401, authorizes the commission to regulate the disposal of most radioactive material in Texas. However, there are no specific requirements for the disposal of NORM waste in the Texas Radiation Control Act that are exceeded by these proposed rules. Third, there is no delegation agreement that would be exceeded by these proposed rules because no delegation agreement relates to this subject matter area. Fourth, the commission does not propose these rules solely under the commission's general powers. THSC, Chapter 401, §§401.051, 401.103, 401.104, and 401.412, specifically authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive materials.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an assessment of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rules is to provide notice requirements for license applications authorizing commercial injection well disposal of NORM waste generated by public water systems. These proposed rules will only apply to license applications for commercial Class I injection well disposal of NORM waste generated by public water systems. Because EPA adopted federal standards for radionuclides in drinking water, some public water systems subject to these federal standards will need to manage and dispose of their treatment residuals containing NORM in a manner that is protective of human health and safety and the environment. The proposed rules would substantially advance this stated purpose by allowing commercial injection well disposal of NORM waste streams generated by public water systems.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property because the proposed rules do not affect real property. In particular, there are no burdens imposed on private real property, and the proposed rules would allow a new option for the commercial disposal of NORM waste for public water systems dealing with NORM waste generated by the treatment of public water supplies. The existing prohibition of commercial disposal of NORM waste is removed to allow commercial Class I injection well disposal of NORM waste generated by public water systems. The proposed amendments to Chapter 39 are procedural changes that establish the public notice requirements for NORM waste disposal license applications. Because the regulation does not affect real property, it does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, these proposed rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on February 24, 2005, at 2:00 p.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239- 4808. All comments should reference Rule Project Number 2004-030-336-WS. Comments must be received by 5:00 p.m., February 28, 2005. For further information or questions concerning this proposal, please contact Debi Dyer, Policy and Regulations Division, at (512) 239-3972.

STATUTORY AUTHORITY

The amendments are proposed under the Texas Radiation Control Act, THSC, Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances; §401.051, which authorizes the commission to adopt rules and guidelines relating to the control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation;

§401.104, which requires the commission to provide rules for licensing for the disposal of radioactive material; and §401.412, which provides authority to the commission to regulate and license the disposal of radioactive substances and to adopt rules necessary to exercise this authority. The amendments are proposed under Texas Water Code, §27.019, which requires the commission to adopt rules reasonably required for the performance of the commission's duties under the Injection Well Act. The proposed amendments are also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

The proposed amendments implement the Texas Radiation Control Act, THSC, Chapter 401; and the Injection Well Act, Texas Water Code, Chapter 27.

§39.703. *Notice of Completion of Technical Review.*

(a) When the executive director has completed the technical review of an application for a license, major amendment, or renewal of a license issued under Chapter 336 of this title (relating to Radioactive Substance Rules) or for a minor amendment issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), notice must [shall] be mailed by the Office of the Chief Clerk and published by the applicant under this subchapter. The deadline to file public comment, protests, or hearing requests is 30 days after publication.

(b) For any other application for a minor amendment to a license issued under Chapter 336, Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), [or] Subchapter G of this title (relating to Decommissioning Standards), or Subchapter K of this title (relating to Commercial Disposal of Naturally Occurring Radioactive Material (NORM) Waste From Public Water Systems), notice must [shall] be mailed by the Office of the Chief Clerk under this subchapter. The deadline to file public comment, protests, or hearing requests is ten days after mailing.

§39.707. *Published Notice.*

(a) For applications under Chapter 336, Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), [or] Subchapter G of this title (relating to Decommissioning Standards), or Subchapter K of this title (relating to Commercial Disposal of Naturally Occurring Radioactive Material (NORM) Waste From Public Water Systems), when notice is required to be published under this subchapter, the applicant shall publish notice at least once in a newspaper of largest general circulation in the county in which the facility is located.

(b) For applications for a new license, renewal license, or major amendment to a license issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), on completion of technical review and preparation of the draft license, the commission shall publish, at the applicant's expense, notice of the draft license and specify the requirements for requesting a contested case hearing by a person affected. The notice must [shall] include a statement that the draft license is available for review on the commission's Web site and that the draft license and application materials are available for review at the offices of the commission and in a public place in the county or counties in which the proposed disposal facility site is located. Notice must [shall] be published in a newspaper of general circulation in each county in which the proposed disposal facility site is located.

(c) (No change.)

§39.709. *Notice of Contested Case Hearing on Application.*

(a) (No change.)

(b) For applications under Chapter 336, Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), [or] Subchapter G of this title (relating to Decommissioning Standards), or Subchapter K of this title (relating to Commercial Disposal of Naturally Occurring Radioactive Material (NORM) Waste From Public Water Systems), notice must [shall] be mailed no later than 30 days before the hearing. For applications under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), notice must [shall] be mailed no later than 31 days before the hearing.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 14, 2005.

TRD-200500187

Stephanie Bergeron Perdue

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: February 27, 2005

For further information, please call: (512) 239-5017



CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

The Texas Commission on Environmental Quality (commission or TCEQ) proposes amendments to §§336.1, 336.105, 336.211, 336.501, and 336.601. The commission also proposes new Subchapter K consisting of §§336.1001, 336.1003, 336.1005, 336.1007, 336.1009, 336.1011, 336.1013, 336.1015, 336.1017, and 336.1019.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

On September 24, 2003, the commission considered the petition for rulemaking filed by Newpark Resources, Inc. on August 5, 2003. The petitioner requested that the commission initiate rulemaking to allow commercial disposal of naturally occurring radioactive material (NORM) waste in Class I injection wells located at facilities at which the storage and processing of such material is licensed by the Texas Department of Health (TDH), Bureau of Radiation Control. TDH is the predecessor agency of the Department of State Health Services. The petitioner also requested amendments to the Memorandum of Understanding (MOU) between TDH and the commission to reflect that TDH is authorized to regulate the storage and processing of NORM waste that will be disposed of at a commercial NORM waste disposal facility.

The commission directed staff to initiate rulemaking for the licensing of commercial disposal of NORM waste streams from public water systems by injection into Class I injection wells. The commission decided that the MOU with TDH should not be amended as requested by the petitioner. The MOU with TDH is codified as 25 TAC §289.101 and adopted by reference in 30

TAC §7.118 (relating to The Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions). Section 289.101(d)(1) of the MOU provides that the receipt, storage, and/or processing of radioactive substances received by a TNRCC (predecessor agency of the TCEQ) licensee at a commercial radioactive substance disposal facility for the explicit purpose of disposal at that facility shall be regulated by the TNRCC (predecessor agency of the TCEQ). This requirement is mirrored in existing TCEQ rules in 30 TAC §336.211(d) (relating to General Requirements for Radioactive Material Disposal). Thus, the receipt, storage, and/or processing of NORM waste at a commercial disposal facility will be regulated by the TCEQ in accordance with the provisions mentioned previously. This is necessary to ensure that NORM waste is properly conditioned for disposal in Class I injection wells. Also, the TCEQ must ensure that procedures for waste receipt, storage, and processing are protective of human health and safety and the environment.

This rulemaking proposes amendments to Chapter 336 to create a licensing program for the commercial Class I injection well disposal NORM waste generated by public water systems. A corresponding rulemaking that includes changes to 30 TAC Chapter 39, Public Notice, is published in this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

Administrative and grammatical changes are proposed throughout the sections to bring the existing rule language into agreement with guidance provided in the Texas Legislative Council Drafting Manual, October 2002.

SUBCHAPTER A: GENERAL PROVISIONS

§336.1, *Scope and General Provisions*

Section 336.1 is proposed to be amended to provide authorization for disposal of NORM waste. Specifically, new §336.1(f)(4) provides authorization for disposal of NORM waste from other persons in accordance with Subchapter K of this chapter (relating to Commercial Disposal of Naturally Occurring Radioactive Material (NORM) Waste From Public Water Systems).

SUBCHAPTER B: RADIOACTIVE SUBSTANCE FEES

§336.105, *Schedule of Fees for Other Licenses*

Section 336.105 is proposed to amend the fees for licenses issued under Subchapter K of this chapter, and to modify fees for licenses issued under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material). Section 336.105(a)(1) proposes to increase the license application fee for facilities regulated under Subchapter F from \$20,000 to \$50,000. The increased fee more accurately reflects the commission's cost in reviewing a Subchapter F license application. Texas Health and Safety Code (THSC), §401.412(d) provides that the commission may assess and collect an annual fee for each license and registration and for each application in an amount sufficient to recover its reasonable costs. The commission's cost for reviewing a new application and issuing a radioactive material license under Subchapter F or Subchapter K is approximately \$40,000 to \$100,000 depending on the complexity of the application. These estimates do not include fringe and indirect costs. Proposed new subsection (a)(3) requires a license application fee of \$50,000 for facilities regulated under Subchapter K. Section 336.105(a) is also proposed to reorganize the list of subchapters in sequential order. Section 336.105(b)(1) proposes to decrease the annual license fee for facilities regulated under Subchapter F from \$28,900 to \$25,000. The decreased

annual fee more accurately reflects the commission's cost in reviewing a licensee's annual reports and conducting inspections of licensed facilities. The commission's cost for conducting an annual review of an existing radioactive material license issued under Subchapter F or Subchapter K is approximately \$25,000. This estimate includes one compliance inspection of the facility per year. Proposed new subsection (b)(3) requires an annual license fee of \$25,000 for facilities regulated under Subchapter K. Section 336.105(b) is also proposed to reorganize the list of subchapters in sequential order. Section 336.105(c) is proposed to be amended to require a fee of \$10,000 for major amendments of licenses issued under Subchapter K. This proposed fee is consistent with existing fees for a major amendment of licenses issued under Subchapter F and Subchapter G. Proposed new §336.105(d) requires a license application fee of \$50,000 for the renewal of licenses issued under Subchapter F or Subchapter K. Existing §336.105(d) is renumbered as §336.105(e) and is amended to provide a fee schedule for holders of licenses issued under Subchapter K following cessation of disposal activities.

SUBCHAPTER C: GENERAL DISPOSAL REQUIREMENTS

§336.211, General Requirements for Radioactive Material Disposal

Section 336.211(a) proposes to add new subsection (a)(7). This amendment is proposed for consistency with other authorized disposal methods referenced in the section. Existing subsection (a)(7) and (8) are renumbered accordingly. Section 336.211(b) proposes to add new §336.211(b)(5). This new subsection requires a person to be specifically licensed to receive waste containing licensed material from other persons for disposal by injection into an underground injection control Class I injection well.

SUBCHAPTER F: LICENSING OF ALTERNATIVE METHODS OF DISPOSAL OF RADIOACTIVE MATERIAL

§336.501, Scope and General Provisions

Section 336.501 proposes to add a new subsection (d). Proposed new §336.501(d) provides that the commission may license the commercial disposal of NORM waste under Subchapter K.

SUBCHAPTER G: DECOMMISSIONING STANDARDS

§336.601, Applicability

Section 336.601(a) proposes to apply the decommissioning criteria in Subchapter G to NORM waste disposal facilities that are licensed under Subchapter K.

NEW SUBCHAPTER K: COMMERCIAL DISPOSAL OF NATURALLY OCCURRING RADIOACTIVE MATERIAL WASTE FROM PUBLIC WATER SYSTEMS

§336.1001, Scope and General Provisions

New §336.1001 is proposed to provide a statement of general applicability for Subchapter K, which establishes requirements for waste disposal facilities that accept NORM waste from public water systems for commercial disposal by injection into Class I injection wells. The requirements of Subchapter K will not preclude a generator from on-site disposal of NORM waste by Class I injection or by other authorized disposal methods under Subchapter F. Subchapter F applies to authorization of non-commercial disposal activities.

§336.1003, Definitions

Proposed new §336.1003(1) would add a definition for "Commercial disposal," that is, the disposal of NORM waste received by the licensee from other persons. Proposed new §336.1003(2) would add a definition for "Naturally occurring radioactive material waste disposal facility." Proposed new §336.1003(3) would add a definition for "Public water system." Proposed new §336.1003(4) would add a definition for "Site."

§336.1005, Disposal Method

New §336.1005 is proposed to authorize the commercial disposal of NORM waste only by injection into a Class I injection well permitted under 30 TAC Chapter 331 (relating to Underground Injection Control) that is specifically permitted for the disposal of NORM waste.

§336.1007, License Application for Commercial Disposal of Naturally Occurring Radioactive Material Waste

New §336.1007 is proposed to provide requirements for applications for licenses for the commercial disposal of NORM waste. New subsection (a) is proposed to provide technical requirements to be addressed in the license application that will enable the executive director to evaluate the applicant's proposed siting, design, construction, and operation of the NORM waste disposal facility. New subsection (b) is a general requirement that the applicant shall submit sufficient information to allow the executive director to assess the potential hazard to public health and safety, and to determine whether the NORM waste disposal facility will have a significant impact on the environment. New subsection (c) requires that the applicant shall provide any other information that may be requested by the executive director.

§336.1009, Standards for Issuance of a License, License Amendment, or License Renewal

New §336.1009 is proposed to specify the standards that the applicant must meet for the commission to issue, amend, or renew a license for commercial disposal of NORM waste. New §336.1009(1) is proposed to ensure that the applicant is qualified by reason of training and experience to carry out the disposal operations in a manner that protects human health and safety and the environment. New §336.1009(2) is proposed to require that the applicant's proposed NORM waste disposal facility's siting, design, construction, operation, and closure are adequate to protect the public health and safety in that it will provide reasonable assurance that the general population will be protected from releases of radioactivity. New §336.1009(3) is proposed to require that the applicant has provided reasonable assurance that applicable technical requirements of this chapter have been met. New §336.1009(4) is proposed to require that the applicant's financial assurance meets the requirements of this chapter. New §336.1009(5) is proposed as a general requirement that the applicant shall meet all applicable requirements under the rules of the commission.

§336.1011, Performance Objectives

New §336.1011 is proposed to establish radiological criteria for the performance of the NORM waste disposal facility. A performance assessment shall be conducted by the applicant to ensure that these radiological criteria are met. Proposed new §336.1011(a) provides that the performance objectives of this section apply to the NORM waste disposal facility and any underground source of drinking water, as defined in §331.2 (relating to Definitions), that may be impacted by activities at the NORM waste disposal facility. The performance objectives do not apply to NORM waste in the injection zone.

Proposed new §336.1011(b) requires that radiation exposure and release of radioactive materials from a NORM waste disposal facility shall be maintained as low as is reasonably achievable. Concentrations of radioactive material that may be released to the general environment in groundwater, surface water, air, soil, plants, or animals shall not result in an annual dose above background exceeding an equivalent of 25 millirems to the whole body, 75 millirems to the thyroid, or 25 millirems to any other organ of any member of the public. These requirements are consistent with the performance objectives for the disposal of low-level radioactive waste given in Subchapter H of this chapter.

Proposed new §336.1011(c) requires that operations at the NORM waste disposal facility shall be conducted in compliance with the standards for radiation protection set out in Subchapter D of this chapter (relating to Standards for Protection Against Radiation), except for releases of radioactivity in effluents from the NORM waste disposal facility, which shall be governed by §336.1011(b). The licensee is also required to conduct analyses of the protection of individuals during operations, and those analyses shall include assessments of expected exposures due to routine operations and likely accidents during handling, storage, processing, and disposal of NORM waste. Proposed new §336.1011(d) requires that the location and characteristics of a NORM waste disposal facility shall preclude potential off-site migration or transport of radioactive materials or ready access to critical exposure pathways. This requirement is consistent with existing rules for licensing of alternative methods of disposal of radioactive material under §336.513(c)(2). Proposed new §336.1011(e) describes the analyses required to demonstrate protection of the general population from releases of radioactivity. Proposed new §336.1011(f) requires that the NORM waste disposal facility shall be located, designed, constructed, operated, and closed so that long-term isolation and custodial care for long-term stability will not be required beyond the time the licensee occupies the NORM waste disposal facility. Proposed new §336.1011(g) requires that the location of the NORM waste disposal facility shall be such that it is compatible with the uses of surrounding environs.

§336.1013, Terms and Conditions of License

New §336.1013 is proposed to establish terms and conditions for a NORM waste disposal facility license. Proposed new subsection (a) is a general provision requiring that at any time before termination of the license, the licensee shall submit written statements under oath upon request of the commission or executive director to enable the commission to determine whether or not the license should be modified, suspended, or revoked. Proposed new subsection (b) provides that the licensee shall be subject to the applicable provisions of THSC, Chapter 401, also known as the Texas Radiation Control Act. Proposed new subsection (c) provides that any license may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application. Proposed new subsection (d) requires that each person licensed by the commission under this subchapter shall confine possession and use of NORM waste to the locations and purposes authorized in the license.

Proposed new subsection (e) requires that no NORM waste may be disposed of until the executive director has inspected the NORM waste disposal facility and has found it to be in conformance with the description, design, and construction described in the application for a license. The licensee may commence disposal operations if the executive director has not inspected

the NORM waste disposal facility within 30 days of being notified in writing by the licensee that disposal operations are ready to begin, or if the executive director has inspected the NORM waste disposal facility and has not given written notice of any noncompliance to the licensee within 15 days of the inspection. Proposed new subsection (f) requires that no NORM waste may be received for disposal at the NORM waste disposal facility until the executive director has approved financial assurance in writing. Proposed new subsection (g) provides that the commission may incorporate additional requirements and conditions in any license at the time of issuance, or thereafter, by appropriate rule or order. Proposed new subsection (h) provides that each license shall be issued for an initial term of ten years from the date of issuance. After the initial ten years, the commission may renew the license for one or more terms of ten years. The authority to dispose of radioactive material expires on the date stated in the license.

§336.1015, Maintenance of Records and Reports

New §336.1015 is proposed to provide requirements for record-keeping and maintenance of records. Proposed new subsection (a) requires that each licensee shall maintain any records and make any reports as may be required by the conditions of the license, by the rules in this chapter, or by orders of the commission. Proposed new subsection (b) provides that records that are required by the rules in this chapter or by license conditions must be maintained for a period specified by the appropriate rules or by license condition. Proposed new subsection (c) provides that each record required by this chapter must be legible throughout the specified retention period. Proposed new subsection (d) provides that if there is a conflict between the commission's rules, license condition, or other written approval or authorization from the executive director pertaining to the retention period for the same type of record, the longest retention period specified takes precedence. Proposed new subsection (e) requires that the licensee shall record the location and the quantity of wastes disposed and shall transfer these records upon license termination to the executive director and to such other government agencies or officials as designated by the commission.

Proposed new subsection (f) describes receipt, acceptance, and manifesting requirements for shipments of NORM waste. Proposed new subsection (g) requires that each licensee authorized to dispose of waste received from other persons shall file a copy of its financial report or a certified financial statement annually with the executive director in order to update the information base for determining financial qualifications. Proposed new subsection (h) provides requirements for the submittal of annual reports by the licensee. Proposed new subsection (i) provides requirements for maintaining an electronic recordkeeping system.

§336.1017, Tests at Naturally Occurring Radioactive Material Waste Disposal Facilities

New §336.1017 is proposed to provide that each licensee shall perform or allow the executive director to perform any tests that the executive director deems appropriate or necessary for the administration of the rules in this chapter.

§336.1019, Liability Coverage and Funding for Naturally Occurring Radioactive Material Waste Disposal Facility Closure and Stabilization

New §336.1019 is proposed to provide financial assurance and liability coverage requirements for NORM waste disposal facilities. Proposed new subsection (a) requires that the applicant shall provide assurance 60 days prior to the initial receipt of

waste that sufficient funds will be available to carry out closure and stabilization of the NORM waste disposal facility. Proposed new subsection (b) requires that the assurance must be based on cost estimates approved by the executive director, which reflect the commission-approved plan for closure and stabilization of the NORM waste disposal facility. The applicant's cost estimates must take into account total costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work. Proposed new subsection (c) provides that the licensee's financial assurance mechanism and cost estimates must be reviewed annually to assure that sufficient funds are available for completion of the closure plan, assuming that the work has to be performed by an independent contractor. Proposed new subsection (d) provides that the amount of financial assurance must change in accordance with the predicted cost of future closure and stabilization. Proposed new subsection (e) requires that 60 days prior to the initial receipt of waste, the licensee shall provide financial assurance for bodily injury and property damage to third parties caused by sudden and non-sudden accidental occurrences arising from operations of the NORM waste disposal facility in a manner that meets the requirements of 30 TAC Chapter 37 (relating to Financial Assurance). Proposed new subsection (e) also requires that financial assurance mechanisms submitted to comply with this section must meet the requirements specified in Chapter 37.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Appropriations Section, has determined that, for the first five-year period the proposed rules are in effect, fiscal implications, which may be significant, are anticipated for the agency as a result of administration or enforcement of the proposed rules.

The proposed rules will authorize licensing for the commercial disposal of NORM waste streams from public water systems by injection into Class I injection wells. If adopted, the rules provide a commercial disposal method for NORM waste. Staff estimates that approximately 100 public water systems in Texas, as well as other systems throughout the United States, will be in violation of the new federal standards and some subset of those systems will need to manage and dispose of NORM waste as a result of treatment.

Revenue Implications

The proposed rules provide for the commercial disposal of NORM waste by injection into Class I injection wells and include license application requirements and standards, performance objectives, conditions of licenses, maintenance of records and reports, testing, and financial assurance and liability coverage requirements. Fees would be added for the review of new license applications, license renewal, and major amendments for licenses issued under Chapter 336, Subchapter K. Fees for licenses issued under Chapter 336, Subchapter F, would be changed for consistency with the proposed fees for Chapter 336, Subchapter K.

It is not known how many license applications will be received as a result of these proposed rules. It is estimated that there may be at least one, and perhaps as many as five, entities that will apply for one of the new licenses. Fee revenue generated by the proposed new rules in Subchapter K to license a NORM waste facility would be a one-time license application fee of \$50,000 per applicant and an annual license fee of \$25,000.

Based upon an estimate of between one and five applications, fee revenue collected by the agency for a one-time license application fee is estimated to be between \$50,000 and \$250,000 in the first five years the rules are in effect.

The annual license fee is payable starting the second year of operation. If between one and five applicants are licensed, fee revenue is estimated to be between \$25,000 and \$125,000 in one year. Over four years, fee revenue is estimated to be between \$100,000 and \$500,000 for the annual license fee.

The agency could see an aggregate increase in fee revenue from these fees to be between \$150,000 and \$750,000 over a five-year period, assuming a minimum of one license and a maximum of five licenses are issued by the commission.

If there are major amendments to licenses for NORM waste disposal into a Class I injection well, the agency would receive \$10,000 per major amendment. The agency would also receive a fee for license renewal of \$50,000 every ten years.

The proposed rules would also change fees for licenses issued under Chapter 336, Subchapter F, for alternative methods of disposal of radioactive material. The one-time license application fee would increase from \$20,000 per application to \$50,000 per application, a \$30,000 increase. The annual license fee would decrease from \$28,900 per year to \$25,000 per year. Currently, only one license has been issued under Subchapter F. Under the proposed rules, an annual \$3,900 decrease in revenue is expected from the annual license fee. Over a five-year period, the revenue decrease for annual license fees would be \$19,500.

Assuming that there is at least one, and perhaps as many as five, license applications to dispose of NORM waste by injection into a Class I injection well, and that there remains one entity licensed to dispose of radioactive material under Subchapter F, revenue to the agency is expected to increase an estimated \$130,500 to \$730,500 over the five-year period. Fee revenue would be deposited in the Hazardous Waste Fee Account and would be used by the agency to cover any additional costs to process and administer any licenses.

The proposed rules will not have any fiscal impact on local governments since its purpose is to merely expand the available disposal options to dispose of NORM waste. The proposed rules do not require compliance with the new radionuclide rules adopted by the United States Environmental Protection Agency.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be the authorization of a NORM waste disposal method, thus giving public water systems an alternative method of disposing of NORM waste streams.

Companies that apply for a license to commercially dispose of NORM waste by injection into Class I injection wells will be significantly affected by the proposed rules. The following fees are proposed as part of this rulemaking: 1) license application fee of \$50,000; 2) annual license fee of \$25,000, starting the second year of the license; 3) fee for major amendments of licenses of \$10,000; and 4) license renewal fee every ten years of \$50,000.

It is estimated that at least one, and as many as five, companies may apply and receive a license to dispose of NORM waste into a Class I injection well. Therefore, costs for a license over a five-year period are estimated to be between \$50,000 and \$250,000

for license application fees and from \$100,000 to \$500,000 for annual license fees, totaling from \$150,000 to \$750,000 in costs.

In addition to these fees, a company will incur financial assurance costs, third-party liability insurance coverage costs, and closure costs when developing a site as a Class I injection well facility for NORM waste disposal. Financial assurance costs are estimated to be between 1% and 5% of the costs to close a Class I injection well facility and may be significant. The cost to close such a facility varies depending on the design of the facility and the amount of disposed waste contained in the facility. Since financial assurance costs and closure costs depend on the design and capacity of each site, the agency cannot accurately estimate the amount of these costs. Third-party liability insurance premium costs vary greatly. Liability coverage between \$4 million and \$8 million could cost as much as \$35,000 to \$70,000 per year or \$175,000 to \$350,000 over a five-year period.

If a company applies for a new license under Chapter 336, Subchapter F, the one-time license application fee will increase from \$20,000 to \$50,000, a \$30,000 increase. However, the annual license fee, payable starting the second year, will decrease from \$28,900 to \$25,000 per year, a \$3,900 per year decrease. Over a five-year period, the net fee increase for a licensee will be \$14,400. Over a ten-year period, the fee for a licensee will be a net decrease of \$5,100.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated as a result of implementation of the proposed rules for small or micro-businesses. The agency does not anticipate that any small or micro-business will apply for a license under the proposed rules. If any small or micro-business applies for a license to commercially dispose of NORM, then the same fees that apply to a large company would also apply to a small or micro-business.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rules are not subject to §2001.0225 because they do not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the proposed rules is to allow commercial injection well disposal of NORM waste generated by public water systems. These rules will benefit public water systems by providing an additional disposal option for NORM waste generated from the treatment of public water supplies. It is not anticipated that the proposed rules will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rules would

only apply to commercial Class I injection well disposal of NORM waste generated by public water systems. Therefore, the commission concludes that these proposed rules do not meet the definition of a major environmental rule.

Furthermore, the proposed rulemaking action does not meet any of the four applicability requirements listed in §2001.0225(a). Section 2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rules do not meet any of these applicability requirements. First, there are no applicable federal standards that these rules would address. Disposal of NORM waste is not subject to standards established by the Nuclear Regulatory Commission or the United States Environmental Protection Agency. Second, the proposed rules do not exceed an express requirement of state law. THSC, Chapter 401, authorizes the commission to regulate the disposal of most radioactive material in Texas. However, there are no specific requirements for the disposal of NORM waste in the Texas Radiation Control Act that are exceeded by these proposed rules. Third, there is no delegation agreement that would be exceeded by these proposed rules because no delegation agreement relates to this subject matter area. Fourth, the commission does not propose these rules solely under the commission's general powers. THSC, Chapter 401, §§401.051, 401.103, 401.104, and 401.412, specifically authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive materials.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an assessment of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rules is to allow commercial injection well disposal of NORM waste generated by public water systems. These proposed rules will only apply to commercial Class I injection well disposal of NORM waste generated by public water systems. The United States Environmental Protection Agency has adopted federal standards for radionuclides in drinking water; some public water systems subject to these federal standards will need to manage and dispose of their treatment residuals containing NORM in a manner that is protective of human health and safety and the environment. The proposed rules would substantially advance this stated purpose by allowing commercial injection well disposal of NORM waste streams generated by public water systems.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property because the proposed rules do not affect real property. In particular, there are no burdens imposed on private real property, and the proposed rules would allow a new option for the commercial disposal of NORM waste for public water systems dealing with NORM waste generated by the treatment of public

water supplies. The existing prohibition of commercial disposal of NORM waste is removed to allow commercial Class I injection well disposal of NORM waste generated by public water systems. Because the regulation does not affect real property, it does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, these proposed rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on February 24, 2005 at 2:00 p.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2004-030-336-WS. Comments must be received by 5:00 p.m., February 28, 2005. For further information or questions concerning this proposal, please contact Debi Dyer, Policy and Regulations Division, at (512) 239-3972.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §336.1

STATUTORY AUTHORITY

The amendment is proposed under the Texas Radiation Control Act, THSC, Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances; §401.051, which authorizes the commission to adopt rules and guidelines relating to the control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive material; and §401.412, which provides authority to the commission to regulate and license the disposal of radioactive substances and to adopt rules necessary to exercise this authority. The amendment is proposed under Texas Water Code, §27.019, which requires the commission

to adopt rules reasonably required for the performance of the commission's duties under the Injection Well Act. The proposed amendment is also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

The proposed amendment implements the Texas Radiation Control Act, THSC, Chapter 401; and the Injection Well Act, Texas Water Code, Chapter 27.

§336.1. *Scope and General Provisions.*

(a) - (e) (No change.)

(f) No person shall:

(1) (No change.)

(2) receive low-level radioactive waste from other persons for the purpose of disposal, except for a person specifically licensed for the disposal of low-level radioactive waste; [øf]

(3) dispose of radioactive materials other than low-level radioactive waste, except for diffuse naturally occurring radioactive material waste having concentrations of less than 2000 pCi/g radium-226 or radium-228; or [-]

(4) dispose of radioactive materials from other persons other than low-level radioactive waste, except for naturally occurring radioactive material waste in accordance with Subchapter K of this chapter (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste from Public Water Systems).

(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 14, 2005.

TRD-200500188

Stephanie Bergeron Perdue

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: February 27, 2005

For further information, please call: (512) 239-5017



SUBCHAPTER B. RADIOACTIVE SUBSTANCE FEES

30 TAC §336.105

STATUTORY AUTHORITY

The amendment is proposed under the Texas Radiation Control Act, THSC, Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances; §401.051, which authorizes the commission to adopt rules and guidelines relating to the control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive material; and §401.412, which provides authority to the commission to regulate and license the disposal of radioactive substances and to adopt rules necessary

to exercise this authority. The amendment is proposed under Texas Water Code, §27.019, which requires the commission to adopt rules reasonably required for the performance of the commission's duties under the Injection Well Act. The proposed amendment is also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

The proposed amendment implements the Texas Radiation Control Act, THSC, Chapter 401; and the Injection Well Act, Texas Water Code, Chapter 27.

§336.105. *Schedule of Fees for Other Licenses.*

(a) Each application for a license under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), ~~or~~ Subchapter G of this chapter (relating to Decommissioning Standards), or Subchapter K of this chapter (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste from Public Water Systems) must ~~shall~~ be accompanied by an application fee as follows:

(1) facilities regulated under Subchapter F [G] of this chapter: \$50,000 [~~\$40,000~~];

(2) facilities regulated under Subchapter G [F] of this chapter: \$10,000; or [~~20,000~~];

(3) facilities regulated under Subchapter K of this chapter: \$50,000.

(b) An annual license fee shall be paid for each license issued under Subchapter F, ~~and~~ Subchapter G, and Subchapter K of this chapter. The amount of each annual fee is ~~shall be~~ as follows:

(1) facilities regulated under Subchapter F [G] of this chapter: \$25,000 [~~\$8,400~~]; or

(2) facilities regulated under Subchapter G [F] of this chapter: \$8,400; or [~~\$28,900~~];

(3) facilities regulated under Subchapter K of this chapter: \$25,000.

(c) An application for a major amendment of a license issued under Subchapter F, ~~or~~ Subchapter G, or Subchapter K of this chapter must ~~shall~~ be accompanied by an application fee of [as set forth in this subsection. The amount of the amendment application fee shall be] \$10,000.

(d) An application for renewal of a license issued under Subchapter F or Subchapter K of this chapter must be accompanied by an application fee of \$50,000.

(e) ~~[(d)]~~ Upon permanent cessation of all disposal activities and approval of the final decommissioning plan, holders of licenses issued under Subchapter F or Subchapter K of this chapter shall ~~may~~ use the applicable fee schedule for subsections (b) and (c) ~~subsection (e) and (b)(1)]~~ of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stephanie Bergeron Perdue
Director, Environmental Law Division
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For further information, please call: (512) 239-5017

SUBCHAPTER C. GENERAL DISPOSAL REQUIREMENTS

30 TAC §336.211

STATUTORY AUTHORITY

The amendment is proposed under the Texas Radiation Control Act, THSC, Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances; §401.051, which authorizes the commission to adopt rules and guidelines relating to the control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive material; and §401.412, which provides authority to the commission to regulate and license the disposal of radioactive substances and to adopt rules necessary to exercise this authority. The amendment is proposed under Texas Water Code, §27.019, which requires the commission to adopt rules reasonably required for the performance of the commission's duties under the Injection Well Act. The proposed amendment is also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

The proposed amendment implements the Texas Radiation Control Act, THSC, Chapter 401; and the Injection Well Act, Texas Water Code, Chapter 27.

§336.211. *General Requirements for Radioactive Material Disposal.*

(a) Unless otherwise exempted, a licensee may ~~shall~~ dispose of licensed material, as appropriate to the type of licensed material, only:

(1) - (6) (No change.)

(7) as authorized under §336.223 of this title (relating to Disposal in Underground Injection Control Class I Injection Wells);

(8) ~~[(7)]~~ as authorized under §336.225 of this title (relating to Disposal of Specific Wastes); or

(9) ~~[(8)]~~ as specifically authorized by commission license issued under this chapter.

(b) A person must be specifically licensed to receive waste containing licensed material from other persons for:

(1) - (2) (No change.)

(3) decay in storage; ~~or~~

(4) disposal at a land disposal facility; ~~or~~ [-]

(5) disposal by injection in an underground injection control Class I injection well.

(c) The processing and storage of radioactive material is subject to applicable rules of the [Texas] Department of State Health Services (DSHS) [~~TDH~~], except as provided in subsection (d) of this section.

(d) The receipt, storage, and/or processing of radioactive materials, except for byproduct material under the jurisdiction of the DSHS [~~TDH~~] and oil and gas naturally occurring radioactive material waste, received at a licensed commercial radioactive material disposal facility for the explicit purpose of disposal at that facility shall be regulated in accordance with 25 TAC §289.101(d)(1) (relating to Memorandum of Understanding Between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions).

(e) (No change.)

(f) The disposal of low-level radioactive waste received from other persons is prohibited, except by a person who [~~that~~] is specifically licensed under Subchapter H of this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER F. LICENSING OF ALTERNATIVE METHODS OF DISPOSAL OF RADIOACTIVE MATERIAL

30 TAC §336.501

STATUTORY AUTHORITY

The amendment is proposed under the Texas Radiation Control Act, THSC, Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances; §401.051, which authorizes the commission to adopt rules and guidelines relating to the control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive material; and §401.412, which provides authority to the commission to regulate and license the disposal of radioactive substances and to adopt rules necessary to exercise this authority. The amendment is proposed under Texas Water Code, §27.019, which requires the commission to adopt rules reasonably required for the performance of the commission's duties under the Injection Well Act. The proposed amendment is also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

The proposed amendment implements the Texas Radiation Control Act, THSC, Chapter 401; and the Injection Well Act, Texas Water Code, Chapter 27.

§336.501. *Scope and General Provisions.*

(a) (No change.)

(b) Except as provided by this subsection, the commission may [~~shall~~] not authorize new or additional facilities or the expansion of existing facilities for the on-site disposal of low-level radioactive waste, except to a person specifically authorized by law for low-level radioactive waste disposal. The commission may, on request or its own initiative, authorize, under this subchapter, on-site disposal of low-level radioactive waste on a specific basis at any facility at which low-level radioactive waste disposal operations began before September 1, 1989, if after evaluation of the specific characteristics of the waste, the disposal site, and the method of disposal, the commission finds that the continuation of the disposal activity will not constitute a significant risk to the public health and safety and to the environment.

(c) No person authorized to dispose of radioactive material under this subchapter may [~~shall~~] receive radioactive material for the purpose of disposal from other persons, sources, other facilities owned or operated by the applicant or licensee, or any other off-site locations.

(d) The commission may license the commercial disposal of naturally occurring radioactive material waste under Subchapter K of this chapter (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste from Public Water Systems).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stephanie Bergeron Perdue

Director, Environmental Law Division

Texas Commission on Environmental Quality

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SUBCHAPTER G. DECOMMISSIONING STANDARDS

30 TAC §336.601

STATUTORY AUTHORITY

The amendment is proposed under the Texas Radiation Control Act, THSC, Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances; §401.051, which authorizes the commission to adopt rules and guidelines relating to the control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive material; and §401.412, which provides authority to the commission to regulate and license the disposal of radioactive substances and to adopt rules necessary to exercise this authority. The amendment is proposed under Texas Water Code, §27.019, which requires the commission to adopt rules reasonably required for the performance of the

commission's duties under the Injection Well Act. The proposed amendment is also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

The proposed amendment implements the Texas Radiation Control Act, THSC, Chapter 401; and the Injection Well Act, Texas Water Code, Chapter 27.

§336.601. Applicability.

(a) The criteria in this subchapter apply to the decommissioning of facilities regulated under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), the inactive disposal sites regulated under this subchapter, ~~and to~~ the ancillary surface facilities that support low-level radioactive waste disposal activities at facilities licensed under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), and to naturally occurring radioactive material waste disposal facilities licensed under Subchapter K of this chapter (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste from Public Water Systems).

(b) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 14, 2005.

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Stephanie Bergeron Perdue

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-5017



SUBCHAPTER K. COMMERCIAL DISPOSAL OF NATURALLY OCCURRING RADIOACTIVE MATERIAL WASTE FROM PUBLIC WATER SYSTEMS

30 TAC §§336.1001, 336.1003, 336.1005, 336.1007, 336.1009, 336.1011, 336.1013, 336.1015, 336.1017, 336.1019

STATUTORY AUTHORITY

The new sections are proposed under the Texas Radiation Control Act, THSC, Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances; §401.051, which authorizes the commission to adopt rules and guidelines relating to the control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive material; and §401.412, which provides authority to the commission to regulate and license the disposal of radioactive substances and to adopt rules necessary to exercise this authority. The new sections are proposed under Texas Water Code, §27.019, which requires the commission to adopt rules reasonably required for the

performance of the commission's duties under the Injection Well Act. The proposed new sections are also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

The proposed new sections implement the Texas Radiation Control Act, THSC, Chapter 401; and the Injection Well Act, Texas Water Code, Chapter 27.

§336.1001. Scope and General Provisions.

This subchapter establishes additional criteria, terms, and conditions under which the commission may issue, amend, or renew a license for commercial disposal of naturally occurring radioactive material waste from public water systems by injection into Class I injection wells.

§336.1003. Definitions.

Most terms used in this subchapter are defined in §336.2 of this title (relating to Definitions). The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Commercial disposal--The disposal by well injection of naturally occurring radioactive material waste received by the licensee from other persons.

(2) Naturally occurring radioactive material waste disposal facility--The land, buildings, structures, and equipment that are used in the disposal of naturally occurring radioactive material (NORM) waste. This includes the land, buildings and structures, and equipment used for the receipt, storage, processing, or handling of NORM waste for purposes of disposal.

(3) Public water system--A public water system as defined in §290.38 of this title (relating to Definitions).

(4) Site--The contiguous land area where any naturally occurring radioactive material (NORM) waste disposal facility or activity is physically located or conducted including adjacent land used in connection with the land disposal facility or activity, and includes soils and groundwater contaminated by radioactive material. Activity includes the receipt, storage, processing, or handling of radioactive material for purposes of disposal at a NORM waste disposal facility.

§336.1005. Disposal Method.

A person licensed for the commercial disposal of naturally occurring radioactive material (NORM) waste may dispose of NORM waste only by injection into a Class I injection well permitted under Chapter 331 of this title (relating to Underground Injection Control) that is specifically permitted for the disposal of NORM waste.

§336.1007. License Application for Commercial Disposal of Naturally Occurring Radioactive Material Waste.

(a) In addition to other application requirements of this title, an applicant for a license to authorize commercial disposal of naturally occurring radioactive material (NORM) waste shall submit:

(1) a projected inventory of radionuclides in the wastes to be disposed and the estimated concentration and total radioactivity by radionuclide;

(2) the estimated frequency and volume of each disposal;

(3) a description of waste packaging and other waste acceptance criteria;

(4) a detailed description of the nonradiological constituents in the waste (e.g., hazardous wastes, metals, absorbents, acids, and chelating agents), including the chemical and physical characteristics of the waste;

(5) a site characterization, including:

(A) the identification of all soil layers by classification according to the Unified Soil Classification System, as described in the American Society for Testing and Materials standard D2487, *Standard Classification of Soils for Engineering Purposes (Unified Soil Classification System)*;

(B) a description of site stratigraphy from the surface to at least the base of the lower confining layer of the injection zone;

(C) a description of potential geologic hazards, including faulting, seismic activity, sink holes, solution depressions, geopressurized zones, and flooding, including identification of the 100-year floodplain;

(D) a description of applicable site hydrogeological data including:

(i) identification of aquifers and confining units, including depths, saturated intervals, overall thicknesses, lithologies, and environments of deposition;

(ii) the processes of recharge and discharge of site groundwaters;

(iii) porosities and hydraulic conductivities; and

(iv) hydraulic gradients, flow directions, and flow velocities;

(E) identification of water wells within a one-mile radius of the facility, including location, use (e.g., commercial, livestock, drinking water, etc.), total depth, aquifer, and screened interval;

(F) a description and analysis of surface water and surface drainage areas, including the location and identification of surface water bodies and wetlands and uses, if any;

(G) a description and analysis of local meteorological data, including hourly, daily, and/or monthly averages of precipitation, evapotranspiration, temperature, wind speed and direction, relative humidity, and atmospheric stability over annual and quarterly periods;

(H) maps and cross sections, as follows:

(i) United States Geological Survey (USGS) 7.5-minute topographic map(s);

(ii) Bureau of Economic Geology (BEG) Geologic Atlas of Texas map(s), or other site-specific surface geology map;

(iii) United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) soil map, or other site soil map;

(iv) potentiometric surface maps of all aquifers; and

(v) structural cross sections along dip and strike;

(I) area resources (e.g., local land use, locations of nearby residences, etc.);

(J) site performance history, including erosion, flooding, subsidence, etc.; and

(K) a summary of any past disposals, including inventories of any radiological parameters, and any observed effects;

(6) a description of the proposed design and construction of the NORM waste disposal facility;

(7) a description of the proposed design and construction of the final closed NORM waste disposal facility and of proposed closure procedures;

(8) information on the depth of NORM waste disposal and proposed operational and safety procedures for disposal of NORM waste;

(9) proposed inspection, maintenance, and emergency procedures;

(10) the applicant's radiological impact assessment consisting of modeling of radionuclide releases to site-specific critical exposure pathways and the projection of potential radiological doses to an individual on site and to a member of the public off site;

(11) proposed radiation safety procedures during operations and closure. Proposed procedures must include:

(A) administrative procedures;

(B) operating procedures;

(C) radiation safety program, including procedures for posting restricted areas, procedures for conducting surveys and monitoring, procedures for respiratory protection, procedures for worker protection and monitoring, and procedures for implementing controls to limit exposure in restricted areas;

(D) procedures for decontamination of equipment and facilities;

(E) industrial safety program; and

(F) quality assurance/quality control procedures;

(12) a description of proposed radiological monitoring of the site;

(13) the organizational structure of the applicant, a description of lines of authority and assignment of responsibilities, and technical qualifications of personnel responsible for radiation safety functions;

(14) information on the applicant's proposed methods of restricting access to the site (e.g., fencing) and proposed permanent site markers;

(15) proposed recordkeeping procedures, including electronic recordkeeping as required in §336.1015 of this title (relating to Maintenance of Records and Reports);

(16) information on land ownership and any covenants or restrictions on land use;

(17) the applicant's justification for the proposed disposal method; and

(18) a decommissioning plan that meets the standards in Subchapter G of this chapter (relating to Decommissioning Standards) including an evaluation of the alternatives to disposing of NORM waste at a licensed NORM waste disposal facility.

(b) The applicant shall submit sufficient information to allow the executive director to assess the potential hazard to public health and safety and to determine whether the NORM waste disposal facility will have a significant impact on the environment as required under §336.1011 of this title (relating to Performance Objectives).

(c) The applicant shall provide any other information that may be requested by the executive director.

§336.1009. Standards for Issuance of a License, License Amendment, or License Renewal.

A license, license amendment, or license renewal for the receipt, storage, processing, and disposal of naturally occurring radioactive material (NORM) waste from public water systems may be issued by the

commission upon finding that the issuance of the license will not constitute an unreasonable risk to the health and safety of the public or have a long-term detrimental impact on the environment and that:

(1) the applicant is qualified by reason of training and experience to carry out the disposal operations requested in a manner that protects public health and safety and the environment;

(2) the applicant's proposed NORM waste disposal facility siting, design, construction, operation, and closure are adequate to protect the public health and safety in that the facility will provide reasonable assurance that the general population will be protected from releases of radioactivity as specified under §336.1011 of this title (relating to Performance Objectives);

(3) the applicant has provided reasonable assurance that the applicable technical requirements of this chapter will be met;

(4) the financial assurance meets the requirements of this chapter; and

(5) the applicant meets all additional applicable requirements under the rules of the commission.

§336.1011. Performance Objectives.

(a) The performance objectives of this section apply to the naturally occurring radioactive material (NORM) waste disposal facility and any underground source of drinking water, as defined in §331.2 of this title (relating to Definitions), that may be impacted by activities at the NORM waste disposal facility. The performance objectives of this section do not apply to NORM waste in the injection zone as defined in §331.2 of this title.

(b) Radiation exposure and release of radioactive materials from a NORM waste disposal facility must be maintained as low as is reasonably achievable (ALARA). Concentrations of radioactive material which may be released to the general environment in groundwater, surface water, air, soil, plants, or animals must not result in an annual dose above background exceeding an equivalent of 25 millirems to the whole body, 75 millirems to the thyroid, or 25 millirems to any other organ of any member of the public.

(c) Operations at the NORM waste disposal facility must be conducted in compliance with the standards for radiation protection set out in Subchapter D of this chapter (relating to Standards for Protection Against Radiation), except for releases of radioactivity in effluents from the NORM waste disposal facility, which are governed by subsection (b) of this section. Analyses of the protection of individuals during operations must include assessments of expected exposures due to routine operations and likely accidents during handling, storage, processing, and disposal of NORM waste.

(d) The location and characteristics of a NORM waste disposal facility must preclude potential off-site migration or transport of radioactive materials or ready access to critical exposure pathways.

(e) Pathways analyzed in demonstrating protection of the general population from releases of radioactivity must include air, soil, groundwater, surface water, plant uptake, and exhumation by animals.

(f) A NORM waste disposal facility for which authorization is requested under this subchapter must be located, designed, constructed, operated, and closed so that long-term isolation and custodial care for long-term stability will not be required beyond the time the licensee occupies the NORM waste disposal facility.

(g) The location of the NORM waste disposal facility must be compatible with the uses of surrounding environs (both the applicant's and adjacent properties').

§336.1013. Terms and Conditions of License.

(a) At any time before termination of the license, the licensee shall submit written statements under oath upon request of the commission or executive director to enable the commission to determine whether or not the license should be modified, suspended, or revoked.

(b) The licensee is subject to the applicable provisions of Texas Health and Safety Code, Chapter 401, also known as the Texas Radiation Control Act (TRCA) now or hereafter in effect and to applicable rules and orders of the commission. The terms and conditions of the license are subject to amendment, revision, or modification, by reason of amendments to the TRCA or by reason of rules and orders issued in accordance with terms of the TRCA.

(c) Any license may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application or any statement of fact required under provisions of the TRCA, or because of conditions revealed by any application or statement of fact or any report, record, or inspection or other means that would warrant the commission to refuse to grant a license on the original application, or for failure to operate the naturally occurring radioactive material (NORM) waste disposal facility in accordance with the terms of the license, or for any violation of or failure to observe any of the terms and conditions of the TRCA or the license or of any rule or order of the commission.

(d) Each person licensed by the commission under this subchapter shall confine possession and use of NORM waste to the locations and purposes authorized in the license.

(e) The licensee may not dispose of NORM waste at a NORM waste disposal facility until the licensee has submitted to the executive director by certified mail or hand delivery a letter signed by the licensee and a Texas licensed professional engineer stating that the NORM waste disposal facility has been constructed in compliance with the license and the application; and

(1) the executive director has inspected the NORM waste disposal facility and finds it is in compliance with the conditions of the license and the application; or

(2) if within 15 days of the letter required by this subsection, the licensee has not received notice from the executive director of an intent to inspect, prior inspection is waived, and the licensee may commence disposal of NORM waste.

(f) The licensee may not receive NORM waste for disposal at the NORM waste disposal facility until the executive director has approved the licensee's financial assurance in writing.

(g) The commission may incorporate in any license at the time of issuance, or thereafter, by appropriate rule or order, additional requirements and conditions with respect to the licensee's receipt, possession, and disposal of waste as it deems appropriate or necessary in order to:

(1) protect the health and safety of the public and the environment; or

(2) require reports and recordkeeping and to provide for inspections of activities under the license that may be necessary or appropriate to effectuate the purposes of the TRCA and the rules adopted under the TRCA.

(h) Each license may be issued for an initial term of ten years from the date of issuance. After the initial ten years, the commission may renew the license for one or more terms of ten years. The authority to dispose of radioactive material expires on the date stated in the license. In any case in which a licensee has timely filed an application for renewal of a license, the authority for continued receipt and disposal

of licensed materials does not expire until the commission has taken final action on the application for renewal.

§336.1015. Maintenance of Records and Reports.

(a) Each licensee shall maintain any records and submit any reports required by the conditions of the license, by the rules in this chapter, or by orders of the commission. Copies of any records or reports required by the license, rules, or orders must be submitted to the executive director or commission upon request. All records and reports required by the license, rules, or orders must be complete and accurate.

(b) Records which are required by the rules in this chapter or by license conditions must be maintained for a period specified by the appropriate rules or by license condition. If a retention period is not otherwise specified, these records must be maintained and transferred to the executive director as specified in subsection (e) of this section as a condition of license termination unless the executive director otherwise authorizes their disposition.

(c) Each record required by this chapter must be legible throughout the specified retention period. The record must be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, must include all pertinent information, such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and the loss of records.

(d) If there is a conflict between the commission's rules, license condition, or other written approval or authorization from the executive director pertaining to the retention period for the same type of record, the longest retention period specified takes precedence.

(e) Notwithstanding subsections (a) - (d) of this section, the licensee shall record the location, the quantity of wastes, and the radioactivity content by radionuclide of waste disposed and shall transfer these records upon license termination to the executive director and to such other government agencies or officials as designated by the commission.

(f) The licensee shall maintain copies of waste manifests of shipments received at the disposal facility. Following receipt and acceptance of a shipment of naturally occurring radioactive material (NORM) waste, the licensee shall record the date that the shipment was received at the disposal facility; the date of disposal of the NORM waste; a traceable shipment manifest number; the containment integrity of the NORM waste disposal containers as received; any discrepancies between materials listed on the manifest and those received; the volume of any pallets, bracing, or other shipping materials, or of materials generated on site, that are contaminated and are disposed of as contaminated or suspect materials; and any evidence of leaking or damaged disposal containers or radiation or contamination levels in excess of limits specified in rules of the United States Department of Transportation or the Department of State Health Services. The licensee shall briefly describe any repackaging operations of any of the disposal containers included in the shipment, plus any other information required by the commission as a license condition. The licensee shall retain these records until the commission transfers or terminates the license that authorizes the activities described in this section.

(g) Each licensee authorized to dispose of NORM waste received from other persons shall file a copy of its financial report or a certified financial statement annually with the executive director in

order to update the information base for determining financial qualifications.

(h) Annual reports must be submitted.

(1) Each licensee authorized to dispose of NORM waste received from other persons under this subchapter shall submit annual reports to the executive director. Reports must be submitted by the end of the first calendar quarter of each year for the preceding year.

(2) The annual reports must include:

(A) specification of the quantity of each radionuclide released to unrestricted areas in liquid and in airborne effluents during the preceding year;

(B) the results of the environmental monitoring program;

(C) a summary of radioactivities and quantities of radionuclides disposed of;

(D) any instances in which observed site characteristics were significantly different from those described in the application for a license; and

(E) any other information that the executive director may require.

(3) If the quantities of radioactive materials released during the reporting period, monitoring results, or maintenance performed are significantly different from those expected in the documents previously reviewed as part of the licensing action, the annual report must cover this specifically.

(i) An electronic recordkeeping system must be maintained. In addition to the other requirements of this section, the licensee shall store, or have stored, manifest and other information pertaining to receipt and disposal of NORM waste in an electronic recordkeeping system that is available for review by commission inspectors.

§336.1017. Tests at Naturally Occurring Radioactive Material Waste Disposal Facilities.

Each licensee shall perform or allow the executive director to perform any tests that the executive director deems appropriate or necessary for the administration of the rules in this chapter during normal working hours, including tests of:

(1) wastes and facilities used for the receipt, storage, processing, handling, and disposal of wastes;

(2) radiation detection and monitoring instruments; and

(3) other equipment and devices used in connection with the receipt, possession, handling, processing, storage, or disposal of waste.

§336.1019. Liability Coverage and Funding for Naturally Occurring Radioactive Material Waste Disposal Facility Closure and Stabilization.

(a) The applicant shall provide assurance 60 days prior to the initial receipt of waste that sufficient funds will be available to carry out closure and stabilization of the naturally occurring radioactive material (NORM) waste disposal facility, including:

(1) decontamination or dismantlement of NORM waste disposal facility structures;

(2) disposal of any radioactive material remaining at the NORM waste disposal facility at closure; and

(3) closure and stabilization of the NORM waste disposal facility so that the site may be released for unrestricted use.

(b) The assurance must be based on cost estimates approved by the executive director that reflect the approved plan for closure and stabilization of the NORM waste disposal facility. The applicant's cost estimates must take into account total costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work.

(c) Financial assurance mechanisms submitted to comply with subsection (a) of this section must meet the requirements specified in Chapter 37, Subchapter S of this title (relating to Financial Assurance for Radioactive Material). The licensee's financial assurance mechanism and cost estimates must be reviewed by the executive director annually to assure that sufficient funds are available for completion of the closure plan, assuming that the work has to be performed by an independent contractor.

(d) The amount of financial assurance must be adjusted as required to meet the predicted cost of future closure and stabilization. Factors affecting cost estimates for closure and stabilization include inflation, increases in the amount of disturbed land, changes in engineering plans, closure and stabilization that have already been accomplished, and any other conditions affecting costs. The closure amount must be at least sufficient at all times to cover the costs of closure of the NORM waste disposal facility.

(e) Sixty days prior to the initial receipt of NORM waste, the licensee shall establish and maintain financial assurance for liability coverage for sudden and nonsudden bodily injury and property damage to third parties caused by accidental occurrences arising from operations of the NORM waste disposal facility that meets the requirements of this subsection, in addition to the requirements specified under Chapter 37, Subchapters A, E, F, and G of this title (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Liability Coverage; Financial Assurance Mechanisms for Liability; and Wording of the Mechanisms for Liability, respectively).

(1) A licensee shall establish and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs.

(2) A licensee shall establish and maintain liability coverage for nonsudden accidental occurrences in the amount of at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs.

(3) A licensee who combines coverage for sudden and nonsudden accidental occurrences shall maintain liability coverage in the amount of at least \$4 million per occurrence and \$8 million annual aggregate.

(4) A licensee may use any of the mechanisms specified in Chapter 37, Subchapter F of this title to demonstrate financial assurance for sudden and nonsudden liability.

(5) A licensee may not use a claims-made insurance policy as security unless the licensee places in escrow, as provided by the executive director, an amount sufficient to pay an additional year of premium for renewal of the policy by the state on notice of termination of coverage.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 14, 2005.

TRD-200500193

Stephanie Bergeron Perdue

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-5017

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8065

The Texas Health and Human Service Commission (HHSC) adopts amended §355.8065, Additional Reimbursement to Disproportionate Share Hospital (DSH). The amendment is adopted without changes to the proposed text as published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7584) and will not be republished.

Amended §355.8065 (f) allows changes in the conversion factors for some hospitals. The amendment changes the weighting factors for a large urban public hospital. The state amended §355.8065 to allow the Texas Center for Infectious Disease to capture more Medicaid DSH funds in fiscal years 2004 and 2005.

HHSC did not receive comments regarding the proposed rule during the comment period, which included a public hearing on August 16, 2004.

The amendment is adopted under the Texas Government Code §531.033, which provides the commissioner of HHSC with broad rulemaking authority; the Human Resources Code §32.021, and the Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2005.

TRD-200500182

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Effective date: February 3, 2005

Proposal publication date: August 6, 2004

For further information, please call: (512) 424-6900



1 TAC §355.8067

The Texas Health and Human Service Commission (HHSC) adopts amended §355.8067, Medicaid Disproportionate Share Hospital (DSH) Reimbursement Methodology. The amendment is adopted without changes to the proposed text as published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7592) and will not be republished.

The state proposes to change §355.8067, Medicaid Disproportionate Share Hospital (DSH) Reimbursement Methodology, by changing the Medicaid Disproportionate Share Hospital (DSH) program to take advantage of the provisions in the Benefits Improvement and Protection Act of 2000 (BIPA) that allow state hospitals to receive DSH funding up to 175 percent of their uninsured costs and non-reimbursed Medicaid costs for a two-year period, beginning September 1, 2003. Section 355.8067(e); has been amended to allow state teaching hospitals to receive additional funding from the federal government.

HHSC received comments from the Texas Hospital Association regarding the proposed changes to the rule during the comment period, which included a public hearing on August 16, 2004. A summary of comments and HHSC's responses follows.

Comment: The Texas Hospital Association (THA) supports the Commission's overall plan to increase Medicaid DSH payments made to the state hospitals only if the aggregated hospital distribution of DSH funds to non-state hospitals in 2004 and 2005 is equal to or greater than fiscal year 2003-levels and a portion of the displaced funds are returned to Texas hospitals. The Texas Hospital Association also stated that the Texas hospitals must have:

"Reinstatement of the adult medically needy spend-down program; and

Continuation of the 2.5 percent restoration in Medicaid hospitals payment in state fiscal year 2005."

Response: HHSC acknowledges the comment received. These recommendations are outside of the Commission's authority; therefore, no change was made to the rules in response to these recommendations.

Comment: The Texas Hospital Association (THA) commented that its support for the proposed DSH rules is dependent on "hold-harmless" DSH funding levels to non-state hospitals.

Response: THA's comments are directed at the state's plan to increase Medicaid DSH Reimbursement Methodology, by changing the Medicaid Disproportionate Share Hospital DSH program in order to take advantage of the provisions in the Benefits Improvement and Protection Act of 2000 (BIPA), which was agreed to by the hospital industry. The association reminded the state that it would support the state's proposed rule changes only if non-state hospitals were held harmless by the changes. "Held harmless" means that a non-state hospital reimbursement would not be reduced below the projected levels. The state has held the non-state hospitals harmless in its application of the rules.

The amendment is adopted under the Texas Government Code §531.033, which provides the commissioner of HHSC with broad rulemaking authority; the Human Resources Code §32.021, and the Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2005.

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Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

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TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 300. ADMINISTRATION

10 TAC §300.3

The Texas Residential Construction Commission (the "commission") adopts a new section at Title 10, Part 7, Chapter 300, §300.3, relating to commission employee training and education. The section is adopted without changes to the proposed text as published in the October 22, 2004 issue of the *Texas Register* (29 TexReg 9757) and, therefore, the section will not be republished. The adopted §300.3 provides the commission's administrators and employees eligibility requirements for training and education which is financially supported by the commission as required by Tex. Gov't Code Ann. §656.048 (Vernon 1994 and Supp. 2004-05). The new section also provides the commission policies for employee in-service instruction, staff development, required training and after-training requirements in accordance with Tex. Gov't Code Ann. §656.102 (Vernon 1994 and Supp. 2004-05).

No written comments were received regarding this section.

This new rule is adopted under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code, and under the specific authority provided in Texas Government Code §656.048, which requires state agencies to adopt rules for eligibility of an agency's administrators and employees for agency-supported training and education and the specific authority provided in Texas Government Code §656.102, which requires state agencies to adopt a policy governing the employee training that relate to an employee's duties following the training.

Cross Reference to Statutes: Title 16, Property Code §408.001 and Government Code §656.048 and §656.102.

No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan Durso

General Counsel

Texas Residential Construction Commission

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For further information, please call: (512) 475-0595

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 61. COMBATIVE SPORTS

16 TAC §§61.10, 61.20, 61.30, 61.40, 61.41, 61.46, 61.47, 61.80, 61.107 - 61.112

The Texas Department of Licensing and Regulation ("Department") adopts amendments to existing rules at 16 Texas Administrative Code §§61.10, 61.20, 61.30, 61.40, 61.41, 61.46, 61.80, 61.107 - 61.110, regarding the combative sports program as published in the October 29, 2004, issue of the *Texas Register* (29 TexReg 9955), without changes, and will not be republished. Sections 61.47, 61.111, and 61.112 are adopted with changes as published in the October 29, 2004, issue of the *Texas Register* (29 TexReg 9955).

The rule adoptions amend existing rules and add a new rule concerning licensee and contestant requirements to improve the safety of combative sports contestants by clarifying language, requirements, and responsibilities of contestants, promoters, referees, and judges.

Section 61.47(a) is adopted with changes from the proposal to require contestants to submit proof of a physical examination, including an ophthalmological exam and proof that the applicant is free of hepatitis B and C viruses and free of HIV. Such examinations must have been made within 30 days of the date of application for licensure as a contestant.

Section 61.111(f) is adopted with changes from the proposal to clarify language.

Section 61.112(i) is adopted with a change from the proposal to correct a typographical error. The last paragraph has been renumbered to (14).

The Department drafted and distributed the proposed rules to persons internal and external to the agency. Written comments were filed by four individuals. Two of them strongly supported the concept set out in proposed new §61.112, Muay Thai Fighting, and the proposed changes to §61.111, Martial Arts. Both commenters stated that proposed changes would help in the effort to have nationally recognized rules for such fighting. Neither offered language changes.

Another commenter objected to the provisions of new subsection (a) of §61.47 that require all applicants for a contestant's license to submit proof of having passed a comprehensive medical exam, an ophthalmological exam, and proof that the applicant is free of hepatitis B and C viruses and free of HIV. The rule also requires that at the time contestants participate in an event the proof of ophthalmological and a blood test for HIV, and hepatitis B and C must be no older than 180 days. The requirement for the exams is not new; it is simply moved from §61.107(b) to this rule to make it clear that the requirement applies to all contestants. Neither is the requirement for proof that a blood test be no more than 180 days old new, but the requirement that an ophthalmological exam be no more than 180 days old is new.

The Medical Advisory Committee at a regularly scheduled meeting on November 16, 2004, also discussed the proposed rule and voted to recommend that it be changed in two respects. They are to require that at the time exam results are presented by a contestant seeking licensure or license renewal, they should be no more than 30 days old, and that rules should not require such exams to be taken more frequently than annually. The comments are well taken in that, as proposed, the rule placed a burden on contestants that is unnecessary; that is having to take exams as frequently as every six months depending on a contestant's fight schedule. The Department agrees with the commenter and the language has been changed as appropriate.

A fourth commenter addressed §61.111, Mixed Martial Arts and in addition to commenting on proposed changes also proposed new changes that have not been published. Those proposals will not be addressed here.

The commenter proposed to add language to subsection (b) allowing gloves between 4 and 8 ounces. The statute provides that gloves may not be less than eight ounces, though they may be greater than eight if allowed by rule. No change is made.

The commenter proposed to add to subsection (c) a provision to allow submission to be signaled by either physical or verbal tap out. The rule at subsection (o) already defines how submission may be indicated. No change is made.

The commenter proposed adding language to subsection (d) to allow the Executive Director to permit the kinds of clothing for contestants other than that set out in the rule and to prohibit shirts and shoes. The rule is specific regarding what contestants may wear; shirts and shoes are not allowed and the Executive Director should not be authorized to override the specificity of the rule. No change is made.

The commenter proposed a change to subsection (e) to provide that hands may be wrapped in a manner approved by the Executive Director. The rule is specific regarding taping of the hands and the Executive Director should not be authorized to override the specificity of the rule. No change is made.

The commenter proposed to add language to subsection (f) to provide that championship matches may be up to 25 minutes in length rather than the 20 provided in the proposed rule. The Department agrees with the commenter and the language has been changed as appropriate.

The commenter proposed to change subsections (j), (k), and (l) to refer to the fighting area rather than the ring. These changes were proposed to comply with a significant definition change proposed that is not addressed here. The changes will only be necessary if the definition of "ring" is changed at a later time. No change is made.

The commenter proposed to change subsection (m) to allow the referee to stop a bout when a laceration occurs rather than requiring the referee to stop the contest to have the ringside physician to examine the laceration. The contestant's safety is paramount and lacerations should be examined before a contest continues. No change is made.

The commenter proposed a number of changes to subsection (n) which defines fouls, but the proposals either were outside the scope of the rule as published or they would have increased risk to contestants. For example, paragraph (6) prohibits kicking an opponent who is down on the mat, was proposed to be changed to prohibit kicking to the head only. An opponent down on the mat is essentially defenseless and should not be kicked at all. Also, paragraph (24) which prohibits kidney strikes was proposed to be changed to prohibit kicking to the kidney with the heel. No changes are made.

The amendments and new rule are adopted under Texas Occupations Code, Chapter 51 and Chapter 2052, which authorizes the Department to adopt rules as necessary to implement the chapter.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Chapter 2052. No other statutes, articles, or codes are affected by the adoption.

§61.47. Responsibilities of Contestants.

(a) Medical Examinations. Each contestant applying for a license, or license renewal, shall submit on a department approved form signed by an examining physician and an examining ophthalmologist proof of having passed a comprehensive medical examination within thirty days of the date the application is signed by the applicant. The exam must include an ophthalmologic medical examination completed by an Ophthalmologist only and must indicate that the applicant is free of Hepatitis B and C viruses and human immunodeficiency virus (HIV.)

(b) A contestant applicant must submit to the Department all information required by the Department's application.

(c) A contestant may not perform under any name that does not appear in departmental records.

(d) Contestants shall in good faith perform to the best of their abilities.

(e) A contestant who commits a foul under these rules is subject to administrative sanctions and or penalties in addition to losing points during a contest.

(f) Arguing with an official or refusing to obey the orders of an official is prohibited.

(g) Contestants shall compete in proper ring attire. Male contestants must wear a protection cup, which shall be firmly adjusted before entering the ring. The trunks' waistband shall not extend above the waistline and the hem may not extend more than two inches below the

knee. Ring attire may not have sequins, buttons, tassels or any other decorative items that may become detached during a contest. A fitted mouthpiece shall be worn while competing. Shoes shall be of soft material and shall not be fitted with spikes, cleats, or hard heels. Female contestants must wear garments that cover their breasts.

(h) All contestants shall be in the dressing room at least 45 minutes before the event is scheduled to begin. The contestants shall be ready to enter the ring immediately after the preceding contest is finished.

(i) After receiving final instructions from the referee, contestants may touch gloves or shake hands and then shall retire to their corners.

(j) After the referee or judge's decision has been announced, both contestants and their seconds shall leave the ring when requested to do so by the referee.

(k) Female contestants shall submit to a pregnancy test at weigh-in.

(l) Female contestants may wear breast protection plates.

(m) Every contestant shall undergo a pre-fight physical examination. If a contestant's physical exam shows him unfit for competition, the contestant shall not participate in the contest. The manager or contestant shall make an immediate report of the facts to the promoter and the Department.

(n) If a contestant becomes ill or injured and cannot take part in a contest for which he is under contract, he or his manager shall immediately report the facts to the promoter and the Department. The contestant must submit to the Department medical proof of the injury or illness.

(o) A positive pregnancy, Hepatitis B or C, or human immunodeficiency virus (HIV) test will result in disqualification.

(p) The administration or use of any drugs or alcohol 24 hours before or during a contest is prohibited unless a drug is prescribed, administered or authorized by a licensed physician and the Executive Director authorizes the contestant to use the drug. If a contestant is taking prescribed or over the counter medication, he/she must inform the Executive Director of such usage at least 24 hours prior to the contest.

(q) As a condition of licensure, contestants waive right of confidentiality of medical records relating to treatment or diagnosis of any condition that relates to the contestant's ability to participate in a contest. All medical records submitted to the Department are confidential, and shall be used only by the Executive Director or his/her representative for the purpose of ascertaining the contestant's ability to be licensed or participate in a contest.

(r) Contestants may not compete against a member of the opposite sex.

(s) Medical disqualification of a contestant is for his own safety and may be made at the recommendation of the examining physician or the Department. If a contestant disagrees with a medical disqualification, medical suspension or rest period set at the discretion of a ringside physician or a disqualification set by the Department, he may request a hearing to show proof of fitness. The hearing shall be provided at the earliest opportunity after the Department receives a written request from the contestant or his manager.

(t) Any licensee who competes outside the State of Texas and receives a medical suspension shall report the fight results and medical suspension to the Department within 72 hours after the event.

(u) Contestants may not participate in any bout while wearing jewelry, including but not limited to, watches, rings, necklaces, bracelets, earrings, any type of stud used to penetrate body piercings, or other removable decorative items.

§61.111. Mixed Martial Arts including Shoot Wrestling/Fighting or Pancrase Wrestling/Fighting.

(a) All rules stated herein apply to the combative sports of shoot wrestling/fighting with the exception of §§61.107 - 61.110 and §61.112 unless this section conflicts with another rule stated herein. If a conflict occurs, this section prevails.

(b) Contestants may wear gloves.

(1) If both contestants wear gloves, closed fist punching and frontal palm/heel strikes are permitted.

(2) If both contestants are not wearing gloves, frontal palm/heel strikes and closed fist punches are not permitted, except to the body.

(c) Contestants may prevail by technical knockout, knockout, submission, disqualification or judge's decision.

(d) Contestants may wear shorts, trunks, wrestling singlet, or traditional martial arts Gi. Knee braces without metal are permissible.

(e) If contestants wear gloves, they may wrap hands. If contestants are not wearing gloves, it is not permissible to wrap hands, but wrists may be taped. Contestants who choose to wear gloves, may only compete with other contestants wearing gloves. Contestants choosing not to wear gloves, may only compete with other contestants who choose not to wear gloves.

(f) Contests shall not exceed a total of 15 minutes per bout with no overtime allowed. Championship contests are allowed two five-minute overtimes with a one-minute rest period.

(g) A fitted mouthpiece shall be worn while competing.

(h) Male contestants must wear a plastic foul-proof groin protector (abdominal guard). Female contestants must wear a plastic pelvic guard and may wear a breast protector.

(i) Contestants may use the ropes once during a round. The second time a contestant grabs the rope will be considered a submission.

(j) Intentionally escaping from the ring will result in a rope call.

(k) If both contestants wrestle into or under the ropes and the referee believes that the ropes are causing interference with the match, the referee may stop the action, put both contestants in a standing position in the middle of the ring and continue the match.

(l) If both contestants are wrestling on the ground and the referee believes neither contestant will gain an advantage, the referee may stop the contest, put both contestants in a standing position in the middle of the ring and continue the match.

(m) If a laceration occurs, the referee shall stop the contest and the ring physician will examine the laceration. Either the physician or referee can stop the contest.

(n) The following tactics are fouls and may result in disqualification or point deduction at the discretion of the referee.

(1) Head butts, side hand strikes, backhand slaps, elbow strikes or clubbing.

(2) Punching or frontal palm/strikes while the opponent's head is touching the mat.

- (3) Kicks, punches or any strikes to the groin.
- (4) Spitting or biting.
- (5) Striking or grabbing the throat area.
- (6) Kicking while the opponent is down on the mat.
- (7) Kneeing to the head while grappling on the mat.
- (8) Kicking to the head while both contestants are on the mat.
- (9) Hair pulling.
- (10) Any un-sportsmanlike conduct.
- (11) Attacking on the break.
- (12) Attacking after the bell has sounded.
- (13) Intentionally pushing, shoving, wrestling, or throwing an opponent out of the ring.
- (14) The use of oily substances such as petroleum jelly or baby oil on any contestant's hair, body or equipment.
- (15) Eye gouging of any kind.
- (16) Fish hooking.
- (17) Putting a finger into any orifice or into any cut or laceration on an opponent.
- (18) Small joint manipulation.
- (19) Striking to the spine or the back or the head.
- (20) Striking downward using the point of the elbow.
- (21) Clawing, pinching, or twisting the flesh.
- (22) Grabbing the clavicle.
- (23) Stomping a grounded opponent.
- (24) Kidney strikes of any kind.
- (25) Spiking an opponent to the canvas on his head or neck.
- (26) Holding the shorts or gloves of an opponent.
- (27) Flagrantly disregarding the instructions of the referee.
- (28) Timidity, including without limitation, avoiding contact with an opponent, intentionally or consistently dropping the mouthpiece or faking an injury.
- (29) Throwing in the towel during competition.
- (o) The determination of the winner shall be as follows:
 - (1) by submission, either verbally or by tapping two or more times on the mat, ropes, ring corner or the opponent's body;
 - (2) by knockout;
 - (3) by being down on the map mat for a ten count;
 - (4) by the referee disqualifying a contestant through a technical knockout;
 - (5) by the referee stopping a match based upon a ring physician's advise;
 - (6) by a contestant's corner stopping the bout;
 - (7) by the referee disqualifying a contestant for a violation of these rules; or
 - (8) by the judges decision based upon technique and aggressiveness minus the number of penalties.

§61.112. Muay Thai Fighting.

(a) All rules stated herein apply to the combative sport of muay thai fighting with the exception of §§61.107 - 61.111, unless this section conflicts with another rule stated herein. If a conflict occurs, this section prevails.

(b) Muay Thai is a competition in which a person utilizes punches elbows, knees and grappling techniques while standing up.

(c) It is permissible to strike an opponent's legs, arms, body, face, and head using the shin, knee, gloved fist or elbow.

(d) Contests will be scheduled for no more than five three-minute rounds with two-minute rest periods.

(e) Contestants must wear gloves weighing not less than 8 oz.

(f) Ankles may be taped or wrapped with approved non-metallic medical wrap.

(g) Male contestants must wear a foul-proof groin protector. Female contestants must wear foul-proof breast protectors. Plastic breast covers are adequate.

(h) Spinning back fist blows are allowed, so long as contact is made only with the padded part of the glove.

(i) The following tactics are fouls and may result in disqualification or the deduction of one or more points, at the discretion of the referee;

- (1) Head butts;
- (2) Striking a downed opponent;
- (3) Kicks, punches or any strikes to the groin, kidneys, or spine;
- (4) Pricking or pressing eyes;
- (5) Spitting or biting;
- (6) Striking the throat area;
- (7) Hair pulling;
- (8) Wrestling or throwing opponent to ground;
- (9) Performing any illegal holding or wrestling technique not part of Muay Thai;
- (10) Holding or stepping on one of the ropes while fighting, elbowing, or striking;
- (11) Any un-sportsmanlike conduct;
- (12) Attacking on the break;
- (13) Attacking after the bell has sounded; and
- (14) Throwing in the towel during competition.
- (j) The determination of the winner shall be as follows:
 - (1) by knockout;
 - (2) by technical knockout;
 - (3) by points on judges' score cards, with at least two rounds of five-round fights being completed, if both fighters are injured or counted out, and are unable to continue;
 - (4) by the referee stopping a match based upon a ring physician's advice;
 - (5) by the referee stopping a match when one fighter is out-classing the other;
 - (6) by a contestants corner stopping the bout;

(7) by the referee disqualifying a contestant for a violation of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2005.

TRD-200500169

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Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7348



CHAPTER 68. ELIMINATION OF ARCHITECTURAL BARRIERS

16 TAC §§68.1, 68.10, 68.20, 68.30, 68.31, 68.50 - 68.54, 68.65, 68.70, 68.74 - 68.76, 68.79, 68.80, 68.90, 68.93, 68.100 - 68.103

The Texas Department of Licensing and Regulation ("Department") adopts amendments to 16 Texas Administrative Code, Chapter 68, Architectural Barriers, §§68.1, 68.10, 68.20, 68.30, 68.31, 68.50 - 68.54, 68.65, 68.70, 68.74 - 68.76, 68.79, 68.80, 68.90, 68.93, 68.100, and 68.101 and new §68.102 and §68.103, concerning project filing and inspection filing fees, and updating and clarifying key terms in the architectural barriers rules. Sections 68.1, 68.51, 68.52, 68.53, 68.54, 68.70, 68.74 - 68.76, 68.79, 68.93, 68.100 and new §68.103 are adopted without changes as published in the September 3, 2004, issue of the *Texas Register* (29 TexReg 8472) and will not be republished. Sections 68.10, 68.20, 68.30, 68.31, 68.50, 68.65, 68.80, 68.90, 68.101 and new §68.102 are adopted with changes as published in the September 3, 2004, issue of the *Texas Register* (29 TexReg 8472).

These rules are necessary to address statutory changes made by Senate Bill 279, 78th Legislature and the codification of the Architectural Barriers statute from Texas Civil Statutes, Article 9102 to Texas Government Code, Chapter 469, made by House Bill 3507, 78th Legislature. In §68.10, changes were needed to revise or add definitions to clarify the application of statutory, rule, and technical requirements.

Section 68.20 has been revised and language added to more accurately reflect what is authorized by statute under Texas Government Code, §469.003. Accordingly, two types of facilities were deleted from the list under §68.20(a) which are, (1) public entities which donated or allowed use of land for buildings/facilities, and (2) those buildings/facilities constructed with private funds with the intent of donating or deeding to a public entity. All other changes more accurately reflect statutory language and department procedures, and some portions have been deleted or relocated to avoid redundancy.

Section 68.30 has been modified and specific exemptions added that should allow for increased understanding of the requirements and more accurate application of the standards. The

added exemptions only apply to those limited elements, spaces, and areas within subject facilities where the Department has determined that provisions of the Act should not apply because application of the standards would be impractical or irrelevant to the nature, use, or function of the building/facility AND where the Department believes that the exemption would not significantly impair the acquisition of goods and services by persons with disabilities, substantially reduce the potential for employment of persons with disabilities, or knowingly result in a violation of the Americans with Disabilities Act of 1990. The changes also more accurately reflect exemption language drafted by the federal Architectural and Transportation Barriers Compliance Board (Access Board). The language in §68.30(13) was added in accordance with statutory changes of the 78th Texas Legislature which limits the department's authority to consider only those portions of buildings that are non-residential in determining compliance with the standards. The exemption language clarifies that all facilities occupied solely for residential use that are constructed, renovated, or modified, in whole or in part, on or after January 1, 1970, using funds from the state or a county, municipality, or other political subdivision of the state are now exempted from provisions of the Act (specifically full application of the standards).

Changes in §68.31 provide clarification regarding who may submit a variance and what to include in a variance application. The revisions should allow for improved adherence to Departmental procedures regarding variances. Other revisions in §68.31 reflect new references due to internal organizational changes; increase the period of time available to request an appeal; and eliminate the provisions for appeal to the commission, as they will ultimately review these matters during enforcement resolution.

The added language in §68.50 clarifies the owner's statutory obligation under Texas Government Code, §469.102 to ensure plans are submitted to the Department; stipulates 14 calendar days in lieu of 10 business days for completion of the Registration Form; and clarifies that the applicable fees must be submitted with each separate building or facility that is part of a bid package involving multiple facilities.

The revised language in §68.51 clarifies the level of deficiencies that may be included in the conditional review approval; describes what deficiencies must be addressed and when they must be addressed; and clarifies procedures involved in verification of design revisions and re-submittals.

The revised language in proposed §68.52 clarifies the procedures involved in the inspection process and specifies that before proceeding with an inspection, prior authorization from the owner is necessary.

Revised language in proposed §68.65 includes clean-up language related to re-codification and internal organizational changes.

The amendments to §68.76 clarify standards of conduct and specific rules of conduct related to variances; add language specifically excluding Registered Accessibility Specialists (RAS) from submitting or preparing a variance for which they have provided review or inspections services; clarify the Department's policy; and allow for RAS assistance in the variance process.

The amendments to §68.79 clarify that third party contract providers are subject to complaints.

The amendments to §68.80 clarify what is to be included (and excluded) from the estimated cost of construction; add a reference to the fee schedule; reduce the two-hour minimum for special inspections to a one-hour minimum; delete the current late submittal fee schedule and replace it with a flat fee of \$300; and consolidate the "project filing fee" and "inspection filing fee" into one fee and reduces the combined fee from \$200 to \$175 pursuant to the Department's annual fee review. Other changes to §68.80 clarify the multiple options available to register projects in which the estimated construction cost is less than \$50,000, including the applicable fees and corresponding services; update the existing rules to reference the proposed "late project filing" fee, and clarify that other fees (i.e. for review and inspection) also apply.

Revisions to §68.93 clarify the Department's process regarding the audit of RAS and responsibilities of the RAS that pertain to inspection and copy of records. It specifically increases the time to make the records available from 10 calendar days to 14 calendar days.

Revisions to §68.101 add language which clarifies the registrant's requirements to include applicable fees with the state lease registration form and the applicability to both initial lease agreements and renewals; revise language previously contained in §68.20 to better reflect department procedures; and clarify that it is the obligation of the leasing agency to request an evaluation that could possibly exempt some or all of the lease space, or otherwise full compliance with the applicable standards will be required.

New §68.102 adds language to address Texas Accessibility Standards (TAS) scoping and application provisions for public right-of-way projects that are subject to the Act; clarifies that the estimated cost of construction and associated fees for projects within the public right-of-way will be based on the costs of the pedestrian elements only; adds language stipulating that the application of TAS shall be limited to only those pedestrian elements being constructed, renovated, modified, or altered as part of the project scope; clarifies that handrails are not required at sidewalks or curb ramps within the public way, however, if provided must comply; establishes that where adjacent roadway running slopes of 5% or greater exist, the pedestrian access route may not exceed the grade established for the roadway, providing an exception if the pedestrian route complies with TAS 4.8 in its entirety; establishes that detectable warnings of 24" depth (in the direction of travel) will be accepted as satisfying the requirements of TAS 4.7.4; and stipulates that non-signalized driveways are not considered hazardous vehicular areas.

New §68.103 adds language allowing specific alternative standards to be accepted as meeting or exceeding the requirements of TAS for detention and correctional facilities. The alternative standards to be recognized are Sections 11 2.3(1) and (2) and Chapter 12 of Title 36 of the CFR, Part 1191 of the Final Rule published in the federal register and drafted by the federal Architectural and Transportation Barriers Compliance Board (Access Board).

Changes from the proposed rules respond to public comments or otherwise reflect non-substantive variations from what was proposed. The Department's legal counsel has advised that the changes affect no new person, entities, or subjects other than those given notice and that compliance with the adopted rules will be less burdensome than under the proposed rules. Accordingly, republication of the adopted rules as proposed rules is not required.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The new rules as proposed were reviewed and approved on March 27, 2003 by the Architectural Barriers Advisory Committee, which is a body that advises the Commission on the adoption of rules related to the elimination of architectural barriers.

The following changes have been made to the proposed rules. In response to a public comment, the definition of "employee work area" in §68.10(15) has been changed to clarify that the list of items not considered to be employee work areas is not an exhaustive list. The definition of "sidewalk" in §68.10(28) has been changed to delete the term "accessible route" and substitute the words "exterior circulation path." This change was in response to a comment from the Texas Department of Transportation that an accessible route may be only a portion of a sidewalk.

In response to a public comment, the definition of "specific employee work areas" in §68.30(9) has been reorganized to provide greater clarity and readability, without altering the intended meaning of the definition. Based on a comment from the Office of the Governor, Committee on People with Disabilities, the exemption for press boxes in §68.30(10) has been deleted and the remaining items renumbered accordingly. After further consideration, the Commission agrees with the commenter that the deleted exemption could be considered to be in violation of current federal standards.

Section 68.50(c) has been revised to clarify that an owner may submit construction documents instead of those documents being submitted by a design professional. This change resulted from a public comment about the clarity of this rule provision.

In response to comments from the Texas Department of Transportation, §68.102 has been reorganized for greater clarity and readability without changing the intended meaning of the language. In response to the same commenter, §68.102(b)(2)(C) has been changed to specify that the maximum distance from the curb line to the detectable warning's edge nearest the curb line is 10" rather than 8". This change should ease the burden of compliance with the rule without materially impacting users of curb ramps. In response to a comment from the City of San Antonio concerning visual contrast, language has been added to clarify that the reference to the term "detectable warnings" means those that comply with 4.29 of the TAS.

Some additional changes have been made based on staff recommendation. The title of the chapter has been changed to "Elimination of Architectural Barriers" to accord with the title of Texas Government Code, Chapter 469. Language has been added to the definition of "Act" in §68.10(1) to reference the title "Texas Architectural Barriers Act," which is commonly used. The language of the exemption in §68.30(11) was changed to clarify that the exemption applies to construction started before April 1, 1994, consistent with the title of that subsection. Finally, non-substantive grammatical changes have been made to the following sections: §§68.20(a), 68.31(b), 68.65(f), 68.90(a), 68.80(c), and 68.101(c).

In addition to the comments which prompted changes discussed above, a number of public comments were received concerning the proposed rules. The comments appeared to be generally in favor of the proposed rules but disagreed with particular provisions or recommended specific changes. The comments are summarized as follows.

The City of San Antonio, commented that the term "in direction of pedestrian travel" in §68.102 is not clear. The Commission disagrees and believes that the term as used in this context gives sufficiently clear guidance, so no change has been made based on this comment. Another comment suggested including diagrams in the rules concerning rights of way. Diagrams generally are not included in the rules. This level of specificity is more appropriate in the TAS, so no change has been made in response to this comment.

One commenter suggested distinguishing between the definitions of "lavatory" and "sink." Such a change is beyond the scope of this rulemaking and likely would require the Department to republish the proposed rules for public comments, so no changes have been made based on this comment. However, this comment may be considered for future rulemaking or possible changes to TAS. The same commenter wanted the exemption in §68.30(9) to apply to all dumpster pads and enclosures. The Commission believes that such a change would expand the exemption beyond what is currently allowed by statute. Current law would not exempt dumpster pads and enclosures that are used by the general public. No change has been made based on this comment.

Accessology, Inc. made several comments. First, the commenter suggested that the term "standard curb height" in §68.30(6) is too subjective and that curb height should be more precisely defined. Standard curb height is usually six inches, but local jurisdictions may vary in this regard. Setting a specific curb height may conflict with what certain jurisdictions currently use. The Commission believes that such a change is beyond the scope of the proposed rules and would require republication of the rules in the *Texas Register* for public comment. The Commission may consider this issue for future rulemaking but does not believe that it is appropriate to include in these rules. Second, the commenter addressed the exemption for accessible routes to press boxes in the proposed §68.30(10). As previously discussed, this provision has been removed from the rules. Third, the commenter suggested a clearer definition of the term "adaptable," as used in §68.30(11), than the definition of "adaptability" found in TAS 3.5.6. This comment addresses a definition in TAS rather than these rules, so no change has been made based on this comment. Fourth, the commenter disagreed with the requirement in §68.10(12) that a designated agent's authority to act for the owner must be in writing. The Commission believes that this requirement, along with changes in §68.31, will provide greater clarity in the process of obtaining variances. In addition, the Commission does not believe this to be an overly burdensome requirement. Therefore, no change has been made based on this comment. Finally, the commenter objected to the change in §68.50(c) of the word "issues" to "submits." The Commission believes that this change is necessary because it will ease the burden of compliance by potentially increasing the amount of time allowed for submitting an elimination of architectural barriers project registration form. No change has been made based on this comment.

The Texas Department of Transportation recommended a number of changes, including adding definitions. The Commission has made some recommended changes as previously described. However, the Commission believes that most of these recommendations would involve substantial revisions to the proposed rules and, therefore, would be beyond the scope of this rulemaking. The Commission will consider the remaining recommendations for possible future rulemaking.

The Department also received a number of questions about the application of the amendments and new rules. These were not considered to be comments and, therefore, are not addressed in this document. The Department will address such questions through its website and other means.

The amendments and new rules are adopted under Texas Government Code, Chapter 469 and Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Government Code, Chapter 469 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

§68.10. Definitions.

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) *Act*--The Elimination of Architectural Barriers Act, Texas Government Code, Chapter 469 (the Texas Architectural Barriers Act).

(2) *Building*--Any structure located in the State of Texas that is used and intended for supporting or sheltering any use or occupancy.

(3) *Business days*--Calendar days, not including Saturdays, Sundays, and legal holidays.

(4) *Commencement of Construction*--The date of placement of engineering stakes, delivery of lumber or other construction materials to the job site, erection of batter boards, formwork, or other construction related work.

(5) *Commissioner*--As used in Chapter 469 and in this chapter, has the same meaning as Executive Director.

(6) *Completion of Construction*--That phase of a construction project which results in occupancy or the issuance of a certificate of occupancy.

(7) *Construction Documents*--Documents used for construction of a building or facility, including working drawings, plans, specifications, addenda, and applicable change orders.

(8) *Contract Provider*--The state agency or political subdivision under contract with the department to perform plan reviews, inspections, or both.

(9) *Common Use*--Refers to those interior and exterior rooms, spaces, or elements that are made available for the use of a restricted group of people (for example, occupants of a homeless shelter, the occupants of an office building, or the guests of such occupants).

(10) *Crosswalk*--That part of a roadway where motorists are required to yield to pedestrians crossing, as defined by state and local regulations, whether marked or unmarked.

(11) *Curb Line*--A line that represents the extension of the face of the curb and marks the transition between the sidewalk and the gutter or roadway at a curb ramp or flush landing.

(12) *Designated Agent*--An individual designated in writing by the owner to act on the owner's behalf.

(13) *Detention and Correctional Facilities*--Facilities where occupants are under some degree of restraint or restriction for

security reasons including, but not limited to, state prisons, county jails, city jails, detention centers, and substance abuse centers.

(14) Element--An architectural or mechanical component of a building, facility, space, or site, e.g., telephone, curb ramp, door, drinking fountain, seating, or water closet.

(15) Employee Work Area--All or any portion of a space designated for employee use only and used only for work. Corridors, toilet rooms, kitchenettes and break rooms are examples of areas that are not employee work areas.

(16) Facility--All or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real property subject to the Act.

(17) Issue--To mail, deliver, transmit, or otherwise release plans or specifications to an owner, lessee, contractor, subcontractor, or any other person acting for an owner or lessee for the purpose of construction, applying for a building permit, or obtaining regulatory approval after such plans have been sealed by an architect, interior designer, landscape architect, or engineer. In the case of a state-funded or other public works project, it is the time at which plans or specifications are publicly posted for bids, after such plans or specifications have been sealed by an architect, interior designer, landscape architect, or engineer.

(18) Overall Responsibility--The level of responsibility held by an architect, landscape architect, interior designer, or engineer who prepares construction documents and coordinates the various aspects of the design of a building or facility.

(19) Owner--The person or persons, company, corporation, authority, commission, board, governmental entity, institution, or any other entity that holds title to the subject building or facility. For purposes under these rules and the Act, an owner may designate an agent.

(20) Pedestrian Access Route--An accessible route for pedestrian use within the public right-of-way.

(21) Pedestrian Elements--Components that make up a pedestrian access route including, but not limited to walking surfaces, ramps, curb ramps, crosswalks, pedestrian overpasses and underpasses, automated pedestrian signals, elevators, and platform lifts.

(22) Public Right-of-Way--The land or property provided for public roadways, usually including the roadway itself and the areas between the roadway and adjacent properties.

(23) Registered Building or Facility--For the purposes of Texas Government Code, §469.102, a registered building or facility is a construction project that has been assigned a project registration number by the department.

(24) Registered Accessibility Specialist--An individual who is certified by the department to perform the review functions, inspection functions, or both review and inspection functions of the department.

(25) Religious Organization--An organization that qualifies as a religious organization as provided in Texas Tax Code, Chapter 11, §11.20(c).

(26) Renovation, Modification, or Alteration--Any construction activity, including demolition, involving any part or all of a building or facility. Cosmetic work and normal maintenance do not constitute a renovation, modification, or alteration.

(27) Rules--Title 16, Texas Administrative Code, Chapter 68, the administrative rules of the Texas Department of Licensing and

Regulation promulgated pursuant to the Texas Elimination of Architectural Barriers Act.

(28) Sidewalk--That portion of an exterior circulation path that is improved for use by pedestrians and usually paved.

(29) Space--A definable area, such as a room, toilet room, hall, assembly area, entrance, storage room, alcove, courtyard, or lobby.

(30) State Agency--A board, commission, department, office, or other agency of state government.

(31) TAS--The Texas Accessibility Standards which were adopted by the Commission December 17, 1993 and became effective April 1, 1994.

(32) Variance Application--The formal documentation filed with the department, by which the owner petitions the department to rule on the impracticality of applying one or more of the standards to a building or facility.

§68.20. Buildings and Facilities Subject to Compliance with the Texas Accessibility Standards.

(a) A building or facility used by the public is subject to compliance with the Texas Accessibility Standards (hereinafter "TAS") if it is constructed, renovated, or modified, in whole or in part, on or after January 1, 1970, using funds from the state or a county, municipality, or other political subdivision of the state.

(b) A building or facility leased for use or occupied, in whole or in part, by the state under a lease or rental agreement entered into on or after January 1, 1972, is subject to the TAS except as modified under §68.101.

(c) The following private buildings and facilities constructed, renovated, or modified on or after January 1, 1992 and defined as a "public accommodation" by Section 301, Americans with Disabilities Act of 1990 (42 U.S.C. Section 12181), and its subsequent amendments, are subject to the TAS:

(1) an inn, hotel, motel, or other place of lodging except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(2) a restaurant, bar, or other establishment serving food or drinks;

(3) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(4) an auditorium, convention center, lecture hall, or other place of public gathering;

(5) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(6) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(7) a terminal, depot, or other station used for specified public transportation;

(8) a park, zoo, amusement park, or other place of recreation;

(9) a museum, library, gallery, or other place of public display or collection;

(10) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(11) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(12) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

(d) Commercial facilities are subject to the Act if they are intended for non-residential use and if their operations will affect commerce. Such application shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in the Americans with Disabilities Act (ADA) §242, or covered under the ADA, Title III, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the federal Fair Housing Act of 1968.

(e) Buildings or facilities of a religious organization are subject to the Act except for areas exempted under §68.30 of this title.

(f) Buildings or facilities not subject to the Act may be registered, reviewed, and/or inspected upon request and payment of the applicable fee(s).

§68.30. Exemptions.

The following buildings, facilities, spaces, or elements are exempt from the provisions of the Act:

(1) *Federal Property.* Buildings or facilities owned, operated, or leased by the federal government;

(2) *Construction Sites.* Structures and sites directly associated with the actual processes of construction, including, but not limited to, scaffolding, bridging, materials hoists, materials storage, construction trailers, and portable toilet units provided for use exclusively by construction personnel on a construction site;

(3) *Raised Areas.* Areas raised primarily for purposes of security, life safety, or fire safety, including, but not limited to, observation or lookout galleries, prison guard towers, fire towers, or lifeguard stands;

(4) *Limited Access Spaces.* Spaces accessed only by ladders, catwalks, crawl spaces, or very narrow passageways;

(5) *Machinery Spaces.* Spaces accessed primarily by service personnel for maintenance, repair, or occasional monitoring of equipment. Machinery spaces include, but are not limited to, elevator pits, elevator penthouses, mechanical, electrical, or communications equipment rooms, piping or equipment catwalks, water and sewage treatment pump rooms and stations, petroleum and chemical processing and distribution structures, electric substations and transformer vaults, environmental treatment structures, and highway and tunnel utility facilities;

(6) *Single Occupant Structures.* Single occupant structures accessed only by passageways below grade or elevated above standard curb height, including but not limited to, toll booths that are accessed only by underground tunnels;

(7) *Restricted Occupancy Spaces.* Vertical access (elevators and platform lifts) is not required for the second floor of two-story control buildings located within a chemical manufacturing facility where the second floor is restricted to employees and does not contain common areas or employment opportunities not otherwise available in accessible locations within the same building;

(8) *Places Used Primarily for Religious Rituals.* An area within a building or facility of a religious organization used primarily for religious ritual as determined by the owner or occupant. To facilitate the plan review, the owner or occupant shall include a clear designation of such areas with the plans submitted for review. This exemption does not apply to common areas. Examples of common areas include, but are not limited to, the following: parking facilities, accessible routes, walkways, hallways, toilet facilities, entrances, public telephones, drinking fountains, and exits;

(9) *Specific Employee Work Areas.* Employee work areas, or portions of employee work areas, that are less than 150 square feet (14 m²) in area and elevated 7 inches (178 mm) or more above the ground or finish floor where the elevation is essential to the function of the spaces; and dumpster pads/enclosures that are an extension of a larger employee work area.

(10) *Elements, Spaces, and Accessible Routes at Fire Stations.* At fire stations, common use spaces and elements accessed exclusively by fire-fighting personnel are only required to be adaptable. Additionally, at multi-level fire stations, levels accessed exclusively by fire-fighting personnel are not required to be served by an accessible route. These exemptions do not apply to the public spaces and elements within these facilities which must comply with all applicable technical requirements and be served by an accessible route;

(11) *Van-Accessible Parking at Garages Constructed Prior to April 1994.* Parking garages where construction was started before April 1, 1994, and the existing vertical clearance of the garage is less than 98", are exempted from requirements to have van-accessible parking spaces located within the garage. If additional surface parking is provided, the required van accessible parking spaces shall be located on a surface lot in closest proximity to the accessible public entrance serving the facility; and

(12) *Residential Facilities.* Those portions of apartments, condominiums, townhomes, and single-family dwellings occupied solely for residential use (i.e. limited to residents and their guests).

§68.31. Variance Procedures.

(a) Requests to waive or modify a standard shall be submitted on the Variance Application form prescribed by the department. A separate variance application shall be submitted for each condition within a single building or facility.

(b) Variance applications shall be submitted by the owner or designated agent of the subject building or facility, and shall be accompanied by the applicable fee and any supporting documentation such as photos, cost analyses, and code references.

(c) A denial of a variance application may be appealed to the Director of Compliance, or his designee, in writing within thirty (30) calendar days from issuance, upon payment of the applicable appeal fee.

(d) A denial of a variance appeal from the Director of Compliance may be appealed to the Executive Director of the Texas Department of Licensing and Regulation, or his designee, in writing within thirty (30) calendar days of notification of the Director of Compliance's decision.

(e) When a variance or appeal determination has been made, the owner or designated agent shall be advised in writing of the determination.

§68.50. Submission of Construction Documents.

(a) An architect, interior designer, landscape architect, or engineer with overall responsibility for the design of a building or facility

subject to §469.101 of the Act, shall mail, ship, or hand-deliver the construction documents to the department, a registered accessibility specialist, or a contract provider not later than five (5) business days after the design professional issues the construction documents.

(b) In instances when there is not a design professional with overall responsibility, the owner is responsible for ensuring construction documents are submitted to the department, a registered accessibility specialist, or a contract provider prior to filing an application for building permit or commencement of construction.

(c) An Elimination of Architectural Barriers Project Registration form must be completed for each subject building or facility and submitted along with the applicable fees not later than fourteen (14) calendar days after the design professional or owner submits the construction documents.

(d) In projects involving multiple phases, construction documents pertaining to each phase shall be submitted in accordance with this chapter.

(e) In projects involving "fast-track" construction, partial submittals of construction documents may be made. Construction documents pertaining to each portion of the work shall be submitted in accordance with these rules.

(f) When bid packages involve multiple facilities such as prototypes or other identical facilities, only one set of construction documents need be submitted. An Elimination of Architectural Barriers Project Registration form and applicable fees must be submitted for each separate building and facility. Construction documents noting site adaptations are required for each location.

§68.65. Advisory Committee.

(a) The Elimination of Architectural Barriers Advisory Committee shall review rules and Technical Memoranda relating to the Elimination of Architectural Barriers program and recommend changes in the rules and Technical Memoranda to the Commission.

(b) Recommendations of the committee will be transmitted to the Commission by the Executive Director through the Director of the Compliance Division.

(c) Committee meetings are called by the committee chair or the Commission.

(d) Expenses reimbursed to committee members shall be limited to authorized expenses incurred while on committee business and traveling to and from committee meetings. The least expensive method of travel should be used.

(e) Expenses paid to committee members shall be limited to those allowed by the State of Texas Travel Allowance Guide and the Texas Department of Licensing and Regulation policies governing travel allowances for employees.

(f) The committee shall be composed of building professionals and persons with disabilities who are familiar with architectural barriers problems and solutions. The committee shall be composed of at least nine members. Persons with disabilities must make up a majority of the membership. Committee members will serve staggered three-year terms.

§68.80. Fees.

(a) Plan review and inspection fees collected by the department shall be determined by the estimated cost of construction for the project, not including site acquisition, furnishings, or equipment that is not part of the building mechanical systems. Fees will be assessed according to the fee schedule (see §68.80(b)). In instances involving multiple facilities with identical drawings, but site adapted, and designed

by the same individual or firm and bid as one package, the plan review fee shall be based on the total construction cost. However, separate inspection fees shall be required. The plan review fee and project filing fee must accompany the registration form and be submitted with the construction documents. The inspection fee must be paid and the department notified of a point of contact within thirty (30) calendar days of completion of construction.

(b) Fee Schedule:

Figure: 16 TAC §68.80(b)

(c) When the estimated construction cost is less than \$50,000, and the project is registered with the department for review, inspection, or for review and inspection, the following shall apply:

(1) the project filing fee and a \$200 plan review fee shall be paid for registration and review only;

(2) the project filing fee, a \$200 plan review fee, and \$200 inspection fee shall be paid for registration, review, and inspection; or

(3) the project filing fee and a \$200 inspection fee shall be paid for registration and inspection only.

(d) All fees must be paid prior to service being performed. All fees are non-refundable.

(e) When a project is registered with the department after completion of construction, the Late Project Filing Fee and other applicable fees shall apply.

(f) Late renewal fees for registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

§68.90. Administrative Sanctions or Penalties.

(a) If a person violates any provision of Texas Government Code, Chapter 469, any provision of Title 16, Texas Administrative Code, Chapter 68, any provision of the Texas Accessibility Standards (TAS), or an order of the Executive Director or Commission, proceedings may be instituted to impose administrative sanctions, administrative penalties, or both administrative penalties and sanctions in accordance with the provisions of Texas Government Code, Chapter 469; Title 2, Texas Occupations Code, Chapter 51; and Title 16, Texas Administrative Code, Chapter 60 of this title (relating to the Texas Commission of Licensing and Regulation).

(b) It is a violation of the Act for a person to perform a plan review or inspection function of the department, unless that person is a department employee, a registered accessibility specialist with the appropriate endorsement, or a contract provider. A person who does not hold one of these designations and performs a plan review or inspection function of the department is subject to administrative penalties in accordance with the Act or Title 2, Texas Occupations Code, Chapter 51 and Title 16, Texas Administrative Code, Chapter 60.

(c) Cheating on an examination is grounds for denial, suspension, or revocation of a license, imposition of an administrative penalty, or both.

§68.101. State Leases.

(a) State leased buildings or facilities with an annual lease expense in excess of \$12,000 shall be registered with the department by completing a State Lease Registration form and submitting it along with the applicable fee(s). This requirement applies to both initial lease agreements and lease renewals. For state leased buildings or facilities that are being newly constructed or substantially renovated, an Elimination of Architectural Barriers Project Registration form shall also be completed.

(b) The agency shall, prior to advertisement for bid, submit to the department for a determination a completed Lease Evaluation

Form obtained from the department. If a Lease Evaluation Form is not submitted, compliance with all applicable standards shall be required. State leases may be exempted from compliance if it is determined by the department that the space will not be used by the public and that the occasion for employment for persons with disabilities is improbable because of the essential job functions.

(c) Buildings or facilities that are leased or occupied in whole or in part for use by the state, shall meet the following requirements of TAS:

(1) New construction shall comply with TAS 4.1.2 and 4.1.3.

(2) Additions shall comply with TAS 4.1.5.

(3) Alterations shall comply with TAS 4.1.6.

(4) Historic buildings or facilities shall comply with TAS 4.1.7.

(5) Existing buildings and facilities are ones that have not been constructed, renovated, modified or altered since April 1, 1994. In an existing building or facility, where alterations are not planned or the planned alterations will not affect an area containing a primary function, the following minimum requirements shall apply:

(A) If parking is required as part of the lease agreement or is provided to serve the leased area, accessible parking spaces shall comply with TAS 4.6.

(B) An accessible route from the parking area(s) shall comply with TAS 4.3.

(C) At least one entrance serving the leased space shall comply with TAS 4.14.

(D) If toilet rooms or bathrooms are required by the lease agreement or are provided to serve the leased area, at least one set of men's and women's toilet rooms or bathrooms or at least one unisex toilet room or bathroom serving the leased area shall comply with TAS 4.22 or 4.23.

(E) Signage at toilet rooms or bathrooms shall comply with TAS 4.30. Toilet rooms or bathrooms serving the leased area which are not accessible shall be provided with signage complying with TAS 4.30.1, 4.30.2, 4.30.3, 4.30.5 and 4.30.7, indicating the location of the nearest accessible toilet room or bathroom within the facility.

(F) If drinking fountains are required by the lease agreement, or are provided to serve the leased area, at least one fountain shall comply with TAS 4.15. If more than one drinking fountain is provided, at least 50% shall comply with TAS 4.15.

(G) If public telephones are required by the lease agreement, or are provided to serve the leased area, at least one public telephone shall comply with TAS 4.31.

(H) If an element or space of a lease is not specified in this subsection but is present in a state leasehold, that element or space shall comply with TAS 4.1.6.

§68.102. Public Right-of-Way Projects.

(a) For purposes of §68.80, the estimated cost of construction for the project shall be based on the pedestrian elements only. The construction documents submitted for review would be those pertaining to the pedestrian elements.

(b) Application of TAS shall be limited to those pedestrian elements being constructed, renovated, modified, or altered as part of the project scope. The pedestrian elements shall comply with applicable TAS 4.1 through 4.35 except as modified by this section.

(1) Sidewalks--At sidewalks constructed within the public right-of-way, handrails are not required; however, if provided they must comply with TAS 4.8.5. Where the adjacent roadway has running slopes of 5% or greater, the pedestrian access route shall not exceed the grade established for the adjacent roadway. **EXCEPTION:** The running slope of a pedestrian access route is permitted to be steeper than the grade of the adjacent roadway provided that the pedestrian access route complies with TAS 4.8.

(2) Curb Ramps--At curb ramps constructed within the public right-of-way, handrails are not required; however, if provided they must comply with TAS 4.8.5. For purposes of this section, non-signalized driveways are not considered to be hazardous vehicular areas.

(A) At perpendicular curb ramps constructed within the public right of way, detectable warnings complying with TAS 4.29 at a minimum of 24" in depth (in the direction of pedestrian travel) and extending the full width of the curb ramp, or textures complying with TAS 4.7.4, shall be provided.

(B) At parallel curb ramps constructed within the public right-of-way, detectable warnings complying with TAS 4.29 at a minimum of 24" in depth (in the direction of pedestrian travel) and extending the full width of the landing where the pedestrian access route enters crosswalks or other hazardous vehicular areas, or textures complying with TAS 4.7.4, shall be provided.

(C) At diagonal curb ramps constructed within the public right-of-way, detectable warnings complying with TAS 4.29 as a minimum 24" in depth (in the direction of pedestrian travel) and extending the full width of the curb ramp or landing, or textures complying with TAS 4.7.4, shall be provided. Additionally, the department will allow the detectable warning to be curved with the radius of the corner. The detectable warning shall be located so that the edge nearest the curb line is 6" minimum and 8" maximum from the curb line.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2005.

TRD-200500168

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: February 1, 2005

Proposal publication date: September 3, 2004

For further information, please call: (512) 463-7348



CHAPTER 72. STAFF LEASING SERVICES

The Texas Department of Licensing and Regulation ("Department") adopts amendments to §72.80 and §72.81 and the repeal of §72.82, regarding the staff leasing services program, as published in the September 24, 2004, issue of the *Texas Register* (29 TexReg 9157) without changes and will not be republished.

The amendments to §72.80 lowers the application/administrative fee, the renewal application/administrative fee, and the limited license application/administrative fee from \$300 to \$150, removes unnecessary language, and changes the name of the fee to application fee. The amendments to §72.81 lowers the license and renewal fee for 0 - 249 employees from \$1,000 to \$250; for 250 -

750 employees from \$1,500 to \$500; and for more than 750 employees from \$2,000 to \$750. The repeal of §72.82 eliminates the non-refundable fee for a background check. This fee is unnecessary because the cost of conducting background checks will be covered by other fees in Chapter 72. Elimination of this fee is necessary for the Department to comply with its responsibility under Texas Occupations Code, §51.202. Texas Occupations Code, §51.202 requires the Department to set fees in amounts reasonable and necessary to cover the costs of administering programs under its jurisdiction. The Department conducted its annual fee review pursuant to §51.202 and recommended to the Texas Commission of Licensing and Regulation ("Commission") that the referenced fees be reduced as indicated. The revenue generated by current fees exceeds the amount required by the Department to cover costs of administering the staff leasing services program. On August 9, 2004, the Commission directed the Department to initiate the recommended fee reductions.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. Two comments were received in support of the amendment. One commenter stated support of the proposed rules. Another commenter applauded the Department for taking steps to reduce the application and licensing fees for staff leasing services as well as eliminating the fee for criminal background checks and believes that the fees are reasonable and accurately reflect the Department's costs to perform important administrative functions, however, they implied there was an inconsistency in the limited license fee requirements. The commenter stated that while the application fee for a limited license is reduced from \$300 to \$150, the license and renewal fee for a limited license remains at \$750 and requested that the Department reduce the license and renewal fee for a limited license to a level commensurate with reasonable and necessary costs of administering this license. The commenter noted that entities seeking a limited license in Texas have only a limited number of worksite employees in the State and therefore do not pose the same administrative burden as fully licensed entities. The commenter feels that reducing the limited license and renewal fee provides equal treatment for those entities and is consistent with the intent of the statute. The Department agrees that the limited staff leasing services licensing fee may need to be reduced and will study the impact of a fee reduction to determine whether it is needed, and at what level the fee should be set.

16 TAC §72.80, §72.81

The amendments are adopted under Texas Labor Code, Chapter 91 and Texas Occupations Code, Chapter 51, §§51.201, 51.202, and 51.203 which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department and which requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering Department programs.

The statutory provisions affected by the adoption are those set forth in Texas Labor Code, Chapter 91 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2005.

TRD-200500166

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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Proposal publication date: September 24, 2004

For further information, please call: (512) 463-7348



16 TAC §72.82

The repeal is adopted under Texas Labor Code, Chapter 91 and Texas Occupations Code, Chapter 51, §§51.201, 51.202, and 51.203 which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department and which requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering Department programs.

The statutory provisions affected by the repeal are those set forth in Texas Labor Code, Chapter 91 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7348



CHAPTER 76. WATER WELL DRILLERS AND WATER WELL PUMP INSTALLERS

The Texas Department of Licensing and Regulation ("Department") adopts the repeal of 16 Texas Administrative Code §76.1011 and new §76.1011, concerning entering into a Memorandum of Understanding (MOU) with the Texas Commission of Environmental Quality (TCEQ) and Groundwater Conservation Districts (GCDs) to coordinate efforts related to investigative procedures for referrals of complaints regarding abandoned and/or deteriorated wells, as published in the October 29, 2004 issue of the *Texas Register* (29 TexReg 9963) without changes, and will not be republished.

The repealed and new rule address statutory changes made by Senate Bill 279, 78th Legislature, which added §1901.257 to the Texas Occupations Code. Section 1901.257(b) requires TCEQ and the Department to "by rule adopt a joint memorandum of understanding to coordinate the efforts of the department, groundwater conservation districts, and the field office of the TCEQ relating to investigative procedures for referrals of complaints regarding abandoned and deteriorated wells." The rule adoption contains the text of the Memorandum of Understanding (MOU) to comply with the statutory requirement. The rule also provides

a mechanism to comply with the requirement that each GCD in which an abandoned and/or deteriorated well is located join the MOU adopted by the Department and TCEQ, and that GCDs may enforce compliance with statutes relating to the plugging of abandoned and/or deteriorated water wells within their boundaries.

The Department drafted and distributed the proposed repeal and new rule to persons internal and external to the agency. No comments were received.

16 TAC §76.1011

The repeal is adopted under Texas Occupations Code, Chapter 1901 and Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapter 1901 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2005.

TRD-200500170

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: February 1, 2005

Proposal publication date: October 29, 2004

For further information, please call: (512) 463-7348



16 TAC §76.1011

The new rule is adopted under Texas Occupations Code, §1901.257(b) and Texas Occupations Code, Chapter 51, which requires adoption of this MOU by rule, and which provides the Department with the authority to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 1901 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.

Executive Director

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For further information, please call: (512) 463-7348



TITLE 22. EXAMINING BOARDS

PART 2. TEXAS STATE BOARD OF BARBER EXAMINERS

CHAPTER 51. PRACTICE AND PROCEDURE SUBCHAPTER A. THE BOARD

22 TAC §51.5

The Texas State Board of Barber Examiners adopts an amendment to §51.5 (Good Standing Required for License Renewal) to specify that the Board may take action to suspend a certificate, license or permit for certain causes including, but not limited to, the failure to pay a fine or penalty in full within 30 days from the date that the Board approves an Agreed Order from the Executive Director or a Proposal for Decision from the State Office of Administrative Hearings in which the fine or penalty is upheld or assessed. The Board would be required to notify the holder of the certificate, license or permit to its intention to suspend the certificate, license or permit and the holder would have the right to a hearing at the State Office of Administrative Hearings before the certificate, license or permit would be suspended. The amendment is adopted without change to the proposed text as published in the October 29, 2004, issue of the *Texas Register* (29 TexReg 9965) and will not be republished.

The action is adopted to increase compliance by licensees and permit holders with the statutes and rules under which they are regulated and to increase the timely collection of fines and penalties by the Board.

No comments were received on the proposed rule changes.

The amendment is adopted under the Texas Occupation Code §1601.151 which provides the Texas State Board of Barber Examiners with the authority to adopt and enforce all rules necessary for the performance of its duties, and under TOC §1601.601 which provides the Board with the authority to suspend or revoke a certificate, license or permit if the applicant or person holding the certificate, license, or permit engages in an act that violates Chapter 1601 or a rule or order of the board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2005.

TRD-200500211

Glenn D. Parker

Executive Director

Texas State Board of Barber Examiners

Effective date: February 3, 2005

Proposal publication date: October 29, 2004

For further information, please call: (512) 936-6333

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SUBCHAPTER B. BARBER COLLEGES, SCHOOLS, AND STUDENTS

22 TAC §51.16

The Texas State Board of Barber Examiners adopts an amendment to §51.16 (Equipment for Students) to clarify that it is the Board's intent that a barber school or college purchase from the Board and issue to all students upon enrollment their own copies of the books published by the Board that contain the statutes and rules that govern the practice of barbering in Texas. Further, it is the Board's intent that the students thereafter retain ownership of the books containing the statutes and rules. The amendment is adopted without change to the proposed text as published in the October 29, 2004, issue of the *Texas Register* (29 TexReg 9966) and will not be republished.

The action is adopted to ensure that all students have their own personal copies of the statutes and rules under which barbering is practiced in order to increase the student's knowledge and awareness of those statutes and rules.

No comments on the proposed rule changes were received.

The amendment is adopted under the Texas Occupation Code §1601.151 which provides the Texas State Board of Barber Examiners with the authority to adopt and enforce all rules necessary for the performance of its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Glenn D. Parker
Executive Director
Texas State Board of Barber Examiners
Effective date: February 3, 2005
Proposal publication date: October 29, 2004
For further information, please call: (512) 936-6333

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SUBCHAPTER D. BARBER SHOPS

22 TAC §51.91

The Texas State Board of Barber Examiners adopted new rule §51.91 (Responsibilities of Shop Owners and Shop Managers) to clarify the responsibilities of barber shop and specialty shop owners and managers in regard to verifying the licenses and permits of all employees and independent contractors (booth renters) who engage in barbering in the shop. The new rule is adopted without changes to the proposed text as published in the October 29, 2004 issue of the *Texas Register* (29 TexReg 9967) and will not be republished.

The action is adopted to increase compliance by licensees and permit holders with the statutes and rules under which they are regulated and help ensure that all individuals engaged in barbering in a barber shop or specialty shop have the appropriate current licenses and permits issued by the Board.

No written comments on the proposed rule changes were received. Oral comments were received at the scheduled Board Meeting. Comments at the board meeting were concerns that it would add to record keeping task.

The new rule is adopted under the Texas Occupation Code Chapter 1601.151 which provides the Texas State Board of Barber Examiners with the authority to adopt and enforce all rules necessary for the performance of its duties and under TOC Chapter 1601.155 which provides the Board with the authority to set fees, and under TOC Chapter 1601.701 which provides the Board with the authority to impose administrative penalties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2005.

TRD-200500210
Glenn D. Parker
Executive Director
Texas State Board of Barber Examiners
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Proposal publication date: October 29, 2004
For further information, please call: (512) 936-6333

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SUBCHAPTER G. PERSONNEL - QUALIFICATIONS AND DUTIES

22 TAC §51.121

The Texas State Board of Barber Examiners adopts the repeal of 22 Texas Administrative Code Chapter 51, Subchapter G, Rule §51.121, concerning the requirements for applicants for the position of barber inspector. The repeal is adopted without change to the proposal as published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11247) and will not be republished.

The action is for the purpose of removing unnecessary job qualifications requirements in the screening and hiring of barber inspectors.

No written comments on the proposed repeal changes were received. Oral comments were received at the scheduled Board Meeting. Comments at the board meeting were concerns that it may lead to lower standards for inspections.

The adopted repeal of this rule is pursuant to the authority of Texas Occupations Code §1601.151 which authorizes the Texas State Board of Barber Examiners to adopt and enforce all rules necessary for the performance of its duties. The adoption of the repeal will not affect any existing statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2005.

TRD-200500212

Glenn D. Parker
Executive Director
Texas State Board of Barber Examiners
Effective date: February 3, 2005
Proposal publication date: December 3, 2004
For further information, please call: (512) 458-4901

PART 4. TEXAS COSMETOLOGY COMMISSION

CHAPTER 89. GENERAL RULES AND REGULATIONS

22 TAC §89.5

The Texas Cosmetology Commission adopts amendments to §89.5, concerning licensing fees without changes to the text as proposed in the December 10, 2004, issue of the *Texas Register* (29 TexReg 11450).

The adopted amendment will increase by \$2 the original and renewal amount for Individual Facialist, Manicurist, Shampoo Technician, Hair Weaving, Wig Specialist and Operator license fees. The amendment will increase by \$6 the original and renewal fee amounts for Manicure Instructor, Facial Instructor and Operator Instructor licenses. The amendments are required in order to pay for the TexasOnLine service.

No public comments were received regarding the amendments as proposed.

The amendments are adopted under Texas Occupations Code, Chapter 1602, §1602.154, which provides the Commission with the authority to "adopt rules consistent with this chapter", to protect the public's health and safety.

No other statutes, articles or codes are affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 10, 2005.

TRD-200500105
Antoinette Humphrey
Executive Director
Texas Cosmetology Commission
Effective date: January 30, 2005
Proposal publication date: December 10, 2004
For further information, please call: (512) 380-7691

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 519. PRACTICE AND PROCEDURE SUBCHAPTER E. POST BOARD ORDER PROCEDURES

22 TAC §519.95

The Texas State Board of Public Accountancy adopts new rule §519.95 concerning Reinstatement without changes to the proposed text as published in the November 26, 2004, issue of the *Texas Register* (29 TexReg 10871). The text of the rule will not be republished.

The new rule §519.95 will require those persons whose certificates were revoked based on their criminal conviction to wait a minimum of two years after completion of their probation before applying for reinstatement of their certificate.

The new rule will function by informing individuals of the minimum waiting period for applying for reinstatement if their certificate was revoked based on their criminal conviction.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2005.

TRD-200500147
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Effective date: February 1, 2005
Proposal publication date: November 26, 2004
For further information, please call: (512) 395-7848

CHAPTER 521. FEE SCHEDULE

22 TAC §521.1

The Texas State Board of Public Accountancy adopts an amendment to §521.1 concerning Individual License Fees without changes to the proposed text as published in the November 26, 2004, issue of the *Texas Register* (29 TexReg 10871). The text of the rule will not be republished.

The amendment to §521.1 will increase individual annual license fees by \$30, from \$30 to \$60 per year. This is the first annual license fee increase since 1994 when the annual license fee was set at \$30, at which time the fee was decreased from \$60.00. During the intervening 10 years the number of licensees has increased by 17%. The Board's operating and enforcement costs have increased significantly without a corresponding increase in revenue. The Board's operations and finances are overseen and governed by Board members that are highly experienced and very competent in business matters, in reviewing business operations and in improving procedures. The Board's ability to increase its efficiency and to achieve operational economies is either exhausted or offer miniscule results.

The amendment will function by increasing Board revenues with which to meet increasing operating and overhead expenses for the enforcement of the Public Accountancy Act.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2005.

TRD-200500148

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Effective date: February 1, 2005

Proposal publication date: November 26, 2004

For further information, please call: (512) 395-7848



22 TAC §521.13

The Texas State Board of Public Accountancy adopts an amendment to §521.13 concerning Firm License Fees without changes to the proposed text as published in the November 26, 2004, issue of the *Texas Register* (29 TexReg 10872). The text of the rule will not be republished.

The amendments to §521.13 will allow a firm to reinstate its license by paying a penalty in addition to the license fee with the penalty amount varying depending on the length of expiration and will increase the additional fee paid by a firm for the number of CPAs in the firm by double the current fee.

The amendment will function by enabling firms to reinstate their expired licenses by payment of an appropriate penalty and by increasing Board revenues with which to meet increasing operating and overhead expenses for enforcement of the Public Accountancy Act.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200500149

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Effective date: February 1, 2005

Proposal publication date: November 26, 2004

For further information, please call: (512) 395-7848

PART 25. TEXAS STRUCTURAL PEST CONTROL BOARD

CHAPTER 593. LICENSES

22 TAC §593.1

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.1, concerning Persons Required to Secure License with changes to the proposed text as published in the October 22, 2004, issue of the *Texas Register* (29 TexReg 9795).

Justification for the rule is that the adoption will codify statute language and clarify the requirements for each license category.

The rule will function in reflecting the correct statutory language. The rule change also adds clarity by defining each certified applicator type. The rule also explains the license status of a technician who has just started as an apprentice.

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

§593.1. *Persons Required to Secure License.*

(a) Business License. Any person engaged in structural pest control must secure a business license from the Board for each business location, including branch offices, in accordance with the Structural Pest Control Act and the regulations of the Board. Each business license holder shall designate a responsible certified commercial applicator for each business location who is not also serving as a responsible certified commercial applicator for any other business licensee or any other business location. No person shall engage in, offer to engage in, advertise for, solicit, or perform any of the services identified in Section 1951.002 of the Texas Structural Pest Control Act, for compensation, without first obtaining a business license and having an certified commercial applicator certified in each license category in which business is conducted.

(b) Responsible Certified Commercial Applicator--The person licensed as a certified commercial applicator, who has been designated to be the responsible certified commercial applicator for a business license location, shall be responsible to provide training and direct supervision for pest inspections, identifications, and control measures of a licensed business. The person may be employed by other business license location(s) and licensed by each location as a certified commercial applicator, but must only be the responsible certified applicator for one business license location.

(c) Certified Commercial Applicator--The person licensed as a certified commercial applicator who can perform pest control services, identifications and control measures without direct supervision. A certified commercial applicator must be licensed for every business location for which the certified commercial applicator is employed.

(d) Certified Noncommercial Applicator--The person, who as an employee, is responsible for providing pest control services to a governmental entity, apartment building, day-care center, hospital, nursing home, hotel, motel, lodge, warehouse, food-processing establishment, school or educational institution and other noncommercial entities. The person licensed as a noncommercial certified applicator shall be responsible to ensure training and direct supervision for pest inspections,

identifications, and control measures of a noncommercial entity. A certified noncommercial applicator must be licensed for every business entity for which the certified noncommercial applicator is employed.

(e) Technician--The person who performs pest control services under the direct supervision of a certified applicator must obtain a technician license by meeting the standards prescribed by the Board in §593.21 of this title (relating to Technician License Standards). A technician must be licensed for every business or noncommercial entity for which the technician is employed.

(f) Apprentice--The person, who has made their initial application for a technician license, has not passed the technician examination and performs pest control services under the supervision of a licensed technician or a certified applicator.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200500150

Dale Burnett

Executive Director

Texas Structural Pest Control Board

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For further information, please call: (512) 305-8270



22 TAC §593.2

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.2, concerning License Application without changes to the proposed text as published in the October 22, 2004, issue of the *Texas Register* (29 TexReg 9796).

Justification for the rule is that the adoption will update the rule by removing the unused reciprocity agreement language and including all license types registering on the Board provided form.

The rule will function in clarifying technician licenses as defined in 22 TAC §593.1(e). The other change deletes the reciprocity agreement language since the Board does not maintain any reciprocity agreements with other states. The term "physical address" is added to assist inspection needs.

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dale Burnett

Executive Director

Texas Structural Pest Control Board

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For further information, please call: (512) 305-8270



22 TAC §593.3

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.3, concerning Insurance Requirement with changes to the proposed text as published in the October 22, 2004, issue of the *Texas Register* (29 TexReg 9797).

Justification for the rule is that the adoption will update the rule using the correct name for the Texas Department of Insurance and provide clarification to insurance requirements for inactive licensees.

The rule will function in reflecting the current Board practice of establishing proof of insurance. Other language changes were for clarity. Subsections (b) and (c) were flipped in order to add continuity.

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

§593.3. Insurance Requirement.

(a) Each business license applicant and certified noncommercial applicator license applicant must submit certificate of insurance with proof of coverage on the form provided by the Board in the amount of not less than \$200,000 for bodily injury and property damage coverage with a minimum total annual aggregate of \$300,000 for all occurrences. The insurance policy must insure applicant for damage to persons or property occurring as a result of operations performed in the course of the business of structural pest control to premises or any other property under applicant's care, custody, or control. No new business license or certified noncommercial applicator license will be issued until insurance requirements are met. Policies must contain a cancellation provision for notification to the Board not less than thirty (30) days prior to cancellation. Certified noncommercial applicators employed by governmental entities are exempt from this provision. Inactive certified applicators and technicians that do not perform structural pest control work for compensation or as a part of the duties of their employment are exempt from this provision.

(b) A licensee who operates as a wood treater who treats wood on commercial property owned by the licensee must submit with their application a general liability insurance policy or certificate of coverage in the amount of not less than \$200,000 for bodily injury and property damage coverage with a minimum total annual aggregate of \$300,000 for all occurrences. No license will be issued until this insurance requirement is met. Policies must contain a cancellation provision for notification to the Board not less than thirty (30) days prior to cancellation.

(c) If payment of claims results in reducing the total aggregate of coverage below \$300,000, the insurance carrier must notify the Board and the licensee within thirty (30) days. The licensee must obtain additional coverage to meet the minimum requirements.

(d) The Board will consider as sufficient only those policies issued by insurers authorized by or registered with the Texas Department of Insurance.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dale Burnett

Executive Director

Texas Structural Pest Control Board

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For further information, please call: (512) 305-8270



22 TAC §593.4

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.4, concerning Resident Agent without changes to the proposed text as published in the October 22, 2004, issue of the *Texas Register* (29 TexReg 9798).

Justification for the rule is that the adoption will update the rule and expressly includes all license categories.

The rule will function in making it clear that if a resident agent is not designated, then the Texas Secretary of State will automatically be designated.

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dale Burnett

Executive Director

Texas Structural Pest Control Board

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For further information, please call: (512) 305-8270



22 TAC §593.5

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.5, concerning Examinations without changes to the proposed text as published in the October 22, 2004, issue of the *Texas Register* (29 TexReg 9798).

Justification for the rule is that the adoption will improve readability and promote uniformity.

The rule will function on several levels. First, out-of-state experience is clarified. The adoption also now incorporates computer based testing. The regulation received additional clarification on what is a pest and the changes also clarify some treatment methods. Also, the educational requirements were clarified when an applicant possesses a degree. Finally, the order was changed on some rules to provide clarity to a reader of the regulations.

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dale Burnett

Executive Director

Texas Structural Pest Control Board

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For further information, please call: (512) 305-8270



22 TAC §593.6

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.6, concerning License Expiration and Renewal without changes to the proposed text as published in the October 22, 2004, issue of the *Texas Register* (29 TexReg 9800.)

Justification for the rule is that the adoption will improve readability and promote uniformity.

The rule will function on several levels. The changes will provide clarification. The requirement will also incorporate the statutory requirements of Occ. Code §1951.302. Lastly, the two year requirement on certified non-commercial applicators is changed to one year. This change will bring the Board's licensing requirements closer to the Board's actual requirements for licensing commercial applicators.

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200500155

Dale Burnett
Executive Director
Texas Structural Pest Control Board
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For further information, please call: (512) 305-8270



22 TAC §593.7

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.7, concerning Fees without changes to the proposed text as published in the October 22, 2004, issue of the *Texas Register* (29 TexReg 9801.)

Justification for the rule is that the adoption provides clarity as to how long a license is valid.

The rule will function by providing clarification as to the length of time a license will run.

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dale Burnett
Executive Director
Texas Structural Pest Control Board
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For further information, please call: (512) 305-8270



22 TAC §593.8

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.8, concerning Loss of Certified Applicator or Business License Holder without changes to the proposed text as published in the October 22, 2004, issue of the *Texas Register* (29 TexReg 9802.)

Justification for the rule is that the adoption improves readability, and clarifies how to get a temporary hardship license.

The rule will function by providing clarification as the requirements of obtaining a hardship license from the Board.

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dale Burnett
Executive Director
Texas Structural Pest Control Board
Effective date: February 1, 2005
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For further information, please call: (512) 305-8270



22 TAC §593.9

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.9 concerning Licensing of Persons with Criminal Backgrounds without changes to the proposed text as published in the October 22, 2004, issue of the *Texas Register* (29 TexReg 9803).

Justification for the rule is that the adoption reflects the codification to the Occupations Code and defines additional criminal actions that can deny issuance of a license.

The rule will function by providing reflecting the changes in codifying the Structural Pest Control Act from Art. 135b-6 to Occupations Code, Chapter 1951. It also updates changes in the law on various criminal acts.

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dale Burnett
Executive Director
Texas Structural Pest Control Board
Effective date: February 1, 2005
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For further information, please call: (512) 305-8270



22 TAC §593.10

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.10, concerning Licensing of Persons with Delinquent Student Loans without changes to the proposed text as published in the October 22, 2004, issue of the *Texas Register* (29 TexReg 9804).

Justification for the rule is that the adoption improves readability and promote uniformity.

The rule will function by providing for clarifications to Board policies.

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200500159

Dale Burnett

Executive Director

Texas Structural Pest Control Board

Effective date: February 1, 2005

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For further information, please call: (512) 305-8270

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22 TAC §593.11

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.11, concerning Certified Noncommercial Applicator Restrictions without changes to the proposed text as published in the October 22, 2004, issue of the *Texas Register* (29 TexReg 9804).

Justification for the rule is that the adoption provides grammatical changes.

The rule will function by providing for grammatical changes.

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2005.

TRD-200500160

Dale Burnett

Executive Director

Texas Structural Pest Control Board

Effective date: February 1, 2005

Proposal publication date: October 22, 2004

For further information, please call: (512) 305-8270

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22 TAC §593.12

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.12, concerning Right-of-way Certification without changes to the proposed text as published in the October 22, 2004, issue of the *Texas Register* (29 TexReg 9805).

Justification for the rule is that the adoption reflects the statute change on jurisdiction.

The rule will function by reflecting that the Board and the Texas Department of Agriculture share jurisdiction.

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2005.

TRD-200500161

Dale Burnett

Executive Director

Texas Structural Pest Control Board

Effective date: February 1, 2005

Proposal publication date: October 22, 2004

For further information, please call: (512) 305-8270

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22 TAC §593.21

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.21, concerning Commercial and NonCommercial Technician License Requirements without changes to the proposed text as published in the October 22, 2004, issue of the *Texas Register* (29 TexReg 9805).

Justification for the rule is that the adoption will improve readability and promote uniformity.

The rule will function by making clear some of calendar time lines for getting a technician's license. The changes will also add some additional requirements for submitting a correct application. Other changes are grammatical in nature or the changes were made to reflect the change in the statutory name. Another change was made on the renewal date. This change clearly spells out that the birthdate is the demarcation line for making a determination on renewals.

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2005.

TRD-200500162

Dale Burnett

Executive Director

Texas Structural Pest Control Board

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For further information, please call: (512) 305-8270



22 TAC §593.23

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.23 concerning Continuing Education Requirements for Certified Applicators with changes to the proposed text as published in the October 22, 2004, issue of the *Texas Register* (29 TexReg 9807).

Justification for the rule is that the adoption improves readability and promote uniformity.

The rule will function by changing references from gender to licensee to reflect the use of the correct language. The change on time is made to reflect that individuals will change employers. The other changes reflect the conditions for hardship as listed in 22 TAC §593.8. The deletion of the reference to the Board reflects the actual practice that the Executive Director decides hardship requests. Lastly, the change on records is made to be consistent with the proposed change to 22 TAC §593.21(j).

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

§593.23. Continuing Education Requirements for Certified Applicators.

(a) Except as provided in subsections (e) and (f) of this section, the Board shall require as a condition to the renewal of each certified applicator license granted pursuant to the provisions of this section, that the holder thereof certify to the Board that the licensee has completed courses of continuing education approved by the Board that cover the applicator's category(ies) of certification for the preceding twelve (12) months from licensee's date of birth. This certification must be completed upon each renewal of the certified applicator's license. Failure to do so will prevent the license from being renewed.

(b) Each certified applicator is required to obtain two (2) units in general training and one (1) unit in each category in which the applicator is certified. General training is defined to include the topics included in the Texas Structural Pest Control Act, Section 1951.351(c). Of the two (2) general training units required for recertification, at least one (1) must be in federal and state laws, pesticide safety, environmental protection, or integrated pest management. The other may be in any general topic.

(c) No approved course may be repeated for credit within the same recertification year.

(d) No more than one (1) unit each year may be obtained through a self-study or electronic course.

(e) Applicators will not be required to obtain units for the first year in which their license is issued. Applicators who become certified in additional categories during any annual renewal period will not be required to obtain units in those categories for that period.

(f) Upon written request, the Executive Director may grant a hardship extension to a certified applicator due to extenuating circumstances. The length of the hardship is at the discretion of the Executive Director.

(g) Each certified applicator must keep a certificate of completion for each course attended for a period of two years, and submit such records to the Board on request. These records are subject to inspection by Board personnel at any time. Continuing education certificates will be made available to the licensee within twenty (20) days of the written request.

(h) The penalty for falsifying continuing education records is a fine of \$2500 to \$5000, a revocation of a license for a minimum of one (1) year and re-testing by the certified applicator.

(i) Certified applicators found not in compliance will have twenty (20) days to produce the required certificates of completion for courses previously attended prior to the initiation of enforcement proceedings. Certified applicators who do not meet the recertification requirements will have their licenses suspended in all deficient categories for one (1) year or until all deficiencies are corrected, and they must then re-qualify by taking the certification examination.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2005.

TRD-200500163

Dale Burnett

Executive Director

Texas Structural Pest Control Board

Effective date: February 1, 2005

Proposal publication date: October 22, 2004

For further information, please call: (512) 305-8270



22 TAC §593.24

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.24, concerning Criteria and Evaluation of Continuing Education with changes to the proposed text as published in the October 22, 2004, issue of the *Texas Register* (29 TexReg 9808.)

Justification for the rule is that the proposal improves readability and promote uniformity. The change also expands on the penalties for individuals who do not follow Board requirements for continuing education providers.

The rule will function by deleting unnecessary grammar like redundancy. The addition of physical address will be an aid to investigators in monitoring presentations. The last change will be for those CEU providers who are not deterred by monetary penalties.

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

§593.24. Criteria and Evaluation of Continuing Education.

(a) The staff shall evaluate continuing education programs, and assign the number of category units for each one. No more than one unit will be assigned for any hour of net actual instruction time. A course may be approved for a maximum of two (2) consecutive years. After a maximum of two (2) years, any previously approved course must have substantial changes in order to qualify for continuing education credit. The staff will consider the learning objectives, technical information given, the accuracy of the information, the relevance of the information to structural pest control, the qualifications of the instructor, and the amount of actual training or self-study time devoted to each program in the process of evaluation. Each continuing education program, including self-study and electronic courses submitted for approval must contain the following:

- (1) a copy of handout materials, if any, which will be distributed to participants during the course;
- (2) inclusive length of time of the course stated in hours, and minutes except electronic and self-study courses;
- (3) date, time, physical address, and city of presentation or examination for self-study courses or electronic courses or if unknown, agreement to provide two (2) weeks notice of each date of presentation or examination;
- (4) category(ies) and number of units in which continuing education units are requested;
- (5) a detailed course outline which will indicate the scope of the course and learning objectives; and
- (6) additional information as requested.

(b) If the speaker, self-study course provider or electronic provider has not been previously approved, the minimum requirements to qualify as a speaker, course presenter, self-study or electronic course provider are:

- (1) a degree from a recognized institution of higher learning which pertains to the course being taught; or
- (2) five (5) years experience as an applicator certified by the Texas Structural Pest Control Board with a current license in the category to be taught; or
- (3) verifiable proof of training and teaching experience within the preceding three (3) years; or
- (4) a combination of education, work related training, and teaching experience which, in the opinion of the Board, would be equivalent to two of the three requirements as previously stated.

(c) Any person seeking approval of a training course must submit the information required at least thirty (30) days prior to the first day of presentation or first offering of an electronic or self-study course. The Executive Director may waive this requirement due to special circumstances. The staff must evaluate and recommend credits within thirty (30) days from the date submitted.

(d) Parts of courses, which focus on promotion of products, policies, or procedures of a company, cannot be included for units. Courses and instructors may be re-evaluated at the Board's discretion. Any changes to courses must be submitted to the Board thirty (30) days prior to the date of presentation.

(e) The Executive Director may direct the staff to re-evaluate its approval of a course or speaker under the provisions of subsection (a) and (b) of this section.

(f) The Board may enter into a memorandum of agreement with a state or professional society or association to recognize the state's pesticide applicator recertification of the society's professional applicator recertification or satisfaction of the requirements of this section for commercial and noncommercial applicator recertification only if:

(1) the standards for recertification meet or exceed the standards of the recertification period as set out in this section;

(2) the agreement reduces duplication of effort and does not increase the recordkeeping burden of the Board.

(g) A certified applicator may submit the information required in §593.24(a),(2), (4) and (5) the names of instructors and verification of attendance for any course attended by the certified applicator which was not previously approved within thirty (30) days of attendance of the course. The Board staff will notify the certified applicator of any units awarded.

(h) Each continuing education program, including self-study and electronic courses submitted for approval must be accompanied by the following information on each speaker, self-study course or electronic course:

(1) name, address, telephone number and company, organization, or institution of higher learning affiliation;

(2) a resume which includes, but is not limited to, the following information;

(A) formal education-degrees held and granting institutions;

(B) industry-related technical experience which relates to the subject matter to be taught;

(C) industry-related teaching experience which relates to the subject matter to be taught;

(D) address and telephone number of at least three references;

(E) membership in trade associations and/or professional organizations; and

(F) publications as sole or junior author.

(i) The sponsor's name, physical address and telephone number will accompany each continuing education program submitted for approval.

(j) Each sponsor shall institute a means or system that verifies that participants attended the training program throughout its stated length or completed self-study program. These systems may include, but are not limited to, sign-in-sign-out rosters, course completion certificates, or the system may be incorporated into the means to verify the participant's comprehension of a subject matter presented. The sponsor or instructor must be alert and actively monitor the participants in the course.

(k) The sponsor must issue a certificate of completion within twenty-one (21) days of course to each applicator completing the course. This document must include at least the following information:

(1) certified applicator name and certified applicator assigned number;

(2) name of sponsor or sponsoring agency, company, or organizations;

(3) number and category of continuing education units awarded;

(4) date and location of training or verification test.

(l) The sponsor must maintain course completion records for two (2) years and a list of participants must be forwarded to the Board within twenty-one (21) days of completion of the training course. List must contain name of sponsor, course title and course number(s), number of units awarded, speaker name and number(s), name of attendee and license number, if applicable.

(m) A non-refundable annual fee is due for each course taken into consideration for approval. Courses may be considered on a two year basis if the course presenter submits a fee of \$40.00 for each year at the time of submission. Course will be approved for a maximum of two (2) consecutive years. Governmental agencies are exempt from this fee if the course is presented as a part of the legally mandated function of the agency or main purpose is education.

(n) For purposes of this section, a course is defined as specific instruction in a category presented by any one sponsor, company or organization.

(o) "Sponsor" means the person, company or organization that compiles, organizes, writes and/or produces category specific training courses to be given at a training seminar submitted to the Texas Structural Pest Control Board for approval as continuing education program for recertification units. The sponsor is responsible for establishing procedures for verification of completion and comprehension of its courses, and for awarding course completion certificates. The sponsor must be responsible for the qualifications, competence and performance of the authors, speakers, presenters, or instructors who produce or present its courses, and for performance of self-study course examination.

(p) Videotapes, slides or other media presentations shall not be approved by the Board unless accompanied by a qualified speaker and course outline, as required by subsection (a) and (c) of this section or unless approved as a self-study course under subsection (h) of this section.

(q) Personnel of the Texas Structural Pest Control Board are exempt from any fee charged for a continuing education program if they are monitoring the program as a part of the duties of their employment.

(r) A course may be approved as a self-study or electronic course if it meets the following additional criteria:

(1) attendees must take an examination designed to verify their knowledge of the material provided in the course. The course sponsors must grade the examination and keep records for a minimum of two (2) years.

(2) the attendee's grade on the examination must be at least 70% correct to obtain credit for the course.

(3) the examination for a self-study course must be proctored by the course provider or person responsible to the course provider. The examination location must be made available and accessible to Board staff.

(4) a self-study course examination proctor must be a certified applicator licensed by the Texas Structural Pest Control Board. Anyone serving as an examination proctor may not take a verification exam for credit while serving as a monitor.

(s) A course may be approved as an electronic course if verified by the responsible certified applicator of the pest control company and/or noncommercial entity.

(t) A self-study course or electronic course is limited to one continuing education unit in the general training or a specific category.

(u) The Executive Director may re-evaluate or cancel a currently approved continuing education course during the calendar year for failure to comply with the elements of the course as outlined in this section.

(v) The penalty for a sponsor or speaker falsifying an application for recertification record can be as much as \$5000. A penalty of \$5000 per incident may be imposed to a sponsor of a continuing education course for the following:

(1) Failure to notify the Board of course presentation as required in subsection (a)(3) of this section.

(2) Failure to submit a list of participants to the Board as required in subsection (l) of this section.

(3) Failure to issue a certificate of completion to each applicator after course completion as required in subsection (k) of this section.

(4) Providing a certificate of attendance to a certified applicator licensee who did not attend and/or complete the course requirements.

(5) Falsely claiming to have conducted a continuing education course.

(6) Failure to conduct a continuing education course for the required length of time.

(7) Making a sales promotion during the instructional period of the continuing education course.

(w) Any continuing education provider who violates this section can have the provider privileges revoked or suspended.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2005.

TRD-200500164

Dale Burnett

Executive Director

Texas Structural Pest Control Board

Effective date: February 1, 2005

Proposal publication date: October 22, 2004

For further information, please call: (512) 305-8270



PART 27. BOARD OF TAX PROFESSIONAL EXAMINERS

CHAPTER 621. ADMINISTRATION

22 TAC §621.1

The Board of Tax Professional Examiners adopts an amendment to §621.1, concerning Powers and Duties without changes to the

proposed text as published in the September 10, 2004, issue of the *Texas Register* (29 TexReg 8768) and will not be republished.

This amendment implements the negotiated rulemaking and alternative dispute resolution programs.

No comments were received on the proposed amendment.

The amendment is adopted under the authority of Texas Civil Statutes Occupations Code, Chapter 1151 Property Taxation Professional Certification Act, which provides the Board of Tax Professional Examiners with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 13, 2005.

TRD-200500173

David E. Montoya

Executive Director

Board of Tax Professional Examiners

Effective date: February 2, 2005

Proposal publication date: September 10, 2004

For further information, please call: (512) 305-7300



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 8. EARLY WARNING SYSTEM FOR INSURERS IN HAZARDOUS CONDITION SUBCHAPTER A. HAZARDOUS CONDITION

28 TAC §8.4

The Texas Department of Insurance adopts new §8.4, concerning hazardous conditions related to the issuance of workers' compensation policies with negotiated deductibles and adopts by reference the Texas Negotiated Deductible Workers' Compensation Form. The section is adopted with changes to the proposed text as published in the October 29, 2004, issue of the *Texas Register* (29 TexReg 10068).

This section is necessary to identify the conditions that may pose extraordinary risk to the solvency of insurers issuing negotiated deductible workers' compensation policies and assure the integrity of insurer's financial statements filed with the Department. Negotiated deductible policies are designed to give policyholders that are willing to assume more risk an option that results in a premium credit which is applied against the workers' compensation policy premium without depriving the employees of benefits. If workers' compensation policies with a negotiated deductible operate as intended, they may be advantageous to policyholders. Policyholders can obtain full insurance coverage at a lower cost by assuming the financial responsibility to reimburse the insurer for amounts paid by the insurer that are within the

deductible amount. A workers' compensation policy with the deductible options binds the insurer to the same unconditional obligation made by insurers issuing all other workers' compensation policies. That unconditional obligation is that all valid injured employee claims arising out of injuries occurring during the policy period and while in the course and scope of employment will be paid by a licensed insurance company pursuant to the workers' compensation law. After the payment of a claim by the insurer, the insurer may seek reimbursement from the policyholder for amounts payable up to the deductible amount. However, an insurer's failure to take steps to ensure that the policyholder can meet its financial obligations under the policy may indicate a hazardous financial condition. The identification of an insurer issuing negotiated deductible workers' compensation policies and exhibiting conditions that may indicate a hazardous condition will permit the Department to seek corrective action to provide greater protection to the public from the risk of an insurer that might be operating in a hazardous condition. This adopted section will also provide safeguards against insurer insolvency and for the General Revenue Fund of the State of Texas since the costs of insurer insolvencies are ultimately recouped via credits against premium taxes that would have otherwise been paid to the state. The adopted section consists of minimum guidelines that the Department believes are reasonable safeguards for financial integrity, prudent financial standards, and reflect current industry standards for insurers issuing workers' compensation policies with negotiated deductibles.

The section, along with conditions set out in §8.3 of the Texas Administrative Code, sets forth the various conditions that the Department will consider to determine whether an insurer issuing workers' compensation policies with a negotiated deductible might be operating in hazardous financial condition. Some of the conditions the Department will consider include an insurer's failure to maintain security for any asset or credit taken against reserves or the insurer's failure to maintain or produce upon the Department's request, gross premium data and first-dollar loss data for each negotiated deductible policy on a quarterly basis in accordance with the Texas Negotiated Deductible Workers' Compensation Form. The existence of one or more of the conditions does not mean that an insurer issuing workers' compensation policies with a negotiated deductible is necessarily in hazardous condition. When one or more of the conditions are considered in the context of the state of affairs of an insurer, they operate as an early warning that the insurer might be hazardous to its policyholders, creditors, and the general public. In response to public comment, subsection (a) was changed to emphasize the discretionary nature of the section as it functions as an early warning system. Also, subsections (e)(1) and (2) have been changed to reduce the insurer's requirement from performing a credit analysis on a quarterly basis to performing a credit analysis as a part of the insurer's initial underwriting function and thereafter on an annual basis. Subsection (e)(2) has also been changed to require an insurer to perform a quarterly review of the sufficiency of the security maintained by the insurer to secure the policyholder's obligations to reimburse the insurer for claims paid and credit taken against reserves up to the negotiated deductible amount. An editorial clarification was made to subsection (c) to avoid potential confusion. This clarification did not result in a substantive change to the meaning or effect of the section.

Comment: A commenter supports the general purpose of the rule but was opposed to one section. The commenter suggests changing the rule to permit alternative approaches to securing

deductibles. This change would specifically express that alternative approaches to securing deductibles is dependent upon the Commissioner's discretion.

Agency Response: The Department notes that the text of the rule coupled with existing §8.1 and §8.3 already provides for the Department's exercise of discretion. The Department believes that adding additional discretion to a rule that already provides for discretion would be confusing. However, additional clarification has been added to subsection (a) in response to the comment. Additionally, the Department believes that the types of security referenced in subsection (e)(6) provide a list of approaches to secure negotiated deductible workers' compensation business in a prudent and conservative manner, which is in the best interest for the insurer, the policyholder, and the Texas taxpayer.

Comment: A commenter suggests adding language expressly granting the Department discretion regarding quarterly reviews for carriers that do not take credit against reserves for negotiated policies. The commenter believes it would be appropriate for the carriers to perform an annual versus a quarterly review of the insurer's security.

Agency Response: It is the Department's position that a fundamental purpose of the rule is to ensure that sufficient assets are maintained to secure obligations owed to injured Texas workers whether such obligations are due now or in the future. If the Department encounters a company that has taken no reserve credit, as suggested by the commenter, the Department would review the type and sufficiency of the company's assets in considering whether to take administrative action. The scenario described by the commenter is not likely to result in a finding of hazardous condition. Changes to subsections (a) and (e)(1) and (2) have been made to address the commenter's concern. Additional language has been added to subsection (a) to emphasize the discretionary nature of the rule. Subsection (e)(1) has been changed to require a credit analysis as a part of the insurer's initial underwriting function and annually thereafter. Subsection (e)(2) has been changed to require a quarterly review of the sufficiency of the security maintained by the insurer to secure the policyholder's obligations to reimburse the insurer for claims paid and credit taken against reserves up to the negotiated deductible amount. The Department believes such information should be readily available by companies writing negotiated deductible workers' compensation business and that maintaining such information is not unduly burdensome.

Comment: A commenter supports the rule and provided a substantial amount of technical information on this specific market. The commenter feels the rule is beneficial to the policyholder and the industry.

Agency Response: The Department appreciates the comment and the technical information provided.

Commenter: A commenter generally agrees with an early warning system but suggests that the financial stability of the insurer must be examined in the aggregate. The commenter suggests that one cannot assume a single policyholder's failure to perform its obligations in a single contract will lead to a financially hazardous condition for the insurer, but rather it is a single factor. Its relevance is relative to the size and financial stability of the insurer as a whole. The commenter suggests a way to address the issue is to determine a threshold at which point an insurer's aggregate exposure is sufficient to merit a review of each policyholder relationship as addressed in subsection (e). Additionally,

the commenter suggests that subsection (e)(6) should also be expanded to give the Department more flexibility.

Agency Response: The Department agrees in part with the commenter but again notes the discretionary nature of the rule, which has been modeled after §8.3 that has worked effectively since 1989. The conditions of subsection (e) operate as an early warning system and simply notify the staff of the Financial Program that further evaluation is necessary. The Department would then typically begin to ask questions of the insurer. The rule does not contemplate a simple "pass or fail test." In application, the Department would consider the magnitude of a policyholder's failure to perform its payment obligations relative to the insurer's circumstances to determine whether or not it was substantively significant to the insurer's ability to meet its financial obligations. Clarifying language has been added to subsection (a) in response to the comment. However, it is the Department's opinion that adding language to the rule basing subsection (e) factors on the relative size of the insurer would discriminate against smaller insurers. In addition, the Department is of the opinion that subsection (e)(6) lists the forms of security necessary to adequately secure negotiated deductible workers' compensation policies in a conservative and prudent manner.

Commenter: A commenter suggests that the proposed rule would not achieve any benefits, and noted five concerns: First, the commenter asserts that §8.4 would conflict with accounting, financial statement, and adjuster licensing laws. The commenter suggests the rule is unnecessary because statutory accounting guidelines (SSAP 55 & 65) are in existence that cover the issues the Department wishes to resolve with proposed §8.4. Therefore, the cost of compliance is unnecessary. Second, Article 21.07-4 of the Insurance Code already mandates adjusters to be licensed and contains statutory remedies for unlicensed adjusters and should not be addressed in subsection (e)(10). The commenter feels subsection (e)(10) should be omitted because it allows the Department to declare that a carrier is in hazardous financial condition because it used an unlicensed adjuster. Third, the commenter suggests if the Department believes that the accounting standards need to be modified, a more appropriate forum to address such proposed amendments would be through the NAIC statutory accounting principles working group. Fourth, the commenter recommends that surety bonds be included as an acceptable form of collateral. Finally, the commenter believes the section would subject carriers to hazardous status due solely to minor technical infractions of the stated conditions.

Agency Response: First, the Department does monitor insurers relative to SSAP 55 and SSAP 65, and the Department disagrees that §8.4 would conflict with these accounting principles. SSAP 55 addresses accounting for unpaid claims and loss and loss adjustment expenses. SSAP 65 addresses accounting for property and casualty contracts. SSAP 65 sets forth accounting rules on when reimbursable amounts may be counted as receivables on paid losses, which is an asset listed on the asset page of the balance sheet. Unlike SSAP 55 and SSAP 65, §8.4 is not an accounting rule but is intended to be used to identify insurers operating in a hazardous condition. In part, §8.4 was designed to address the sufficiency of security related to the reserve credit taken against reserve liabilities, which neither SSAP 55 nor SSAP 65 address. Further, the accounting guidance noted by the commenter does not address the credit analysis of the policyholder contemplated by the section. The Department believes that a credit analysis must be made on

a policyholder before an insurer can be in a position to determine the amount and type of security needed. It is the Department's opinion that insurers that elect to offer workers' compensation policies with a negotiated deductible should expect to incur reasonable costs associated with conducting business in a reasonably conservative and prudent manner. The Department further notes that the failure to conduct business in this manner has led to the demise of several large insurers resulting in harm to consumers and negative impacts to the State's General Revenue. Second, subsection (e)(10) is a cross-reference to Article 21.07-4. The Department disagrees that this issue is irrelevant to workers' compensation policies with a negotiated deductible. Rather, it has been the Department's experience that the issue is prevalent with these types of policies. The Department will apply discretion when subsection (e) factors are identified. In the case where an insurer is using an unlicensed adjuster but not in hazardous financial condition, the Department will take appropriate action pursuant to applicable provisions of the rules and regulations of the Department and the Texas Insurance Code. Third, the commenter suggested that a more appropriate remedy would be a national effort at NAIC statutory principles working group. The Department agrees in part with the commenter and has participated on the relevant NAIC accounting committees for many years and is familiar with related NAIC initiatives. A joint working group comprised of the NAIC and the International Association of Industrial Accident Boards called the NAIC/IAIABC working group provided extensive research to the Department, which was used to base the rule. However, it is uncertain when a NAIC model rule will be available, and the Department is of the opinion that a proactive approach to this issue is in the best interest of the insurer, the policyholder, and the Texas taxpayer. Fourth, the Department disagrees that surety bonds should be added as an adequate form of security and notes that the security requirements for §8.4 were based on the security requirements used to secure reinsurance, which do not include surety bonds. Moreover, the Department does not consider surety bonds to be in the same credit category as letters of credit and the other assets listed in subsection (e)(6). The Department is aware of instances in which a failure to pay on surety bonds have led to litigation and has concerns whether surety bonds would be readily available for the purpose intended by the section. The Department feels that a type of security that may result in litigation is counterintuitive to the idea of the intended security and ultimately puts Texas injured workers at risk.

Finally, the Department disagrees that §8.4 would automatically subject carriers to hazardous financial condition status solely due to minor technical infractions of the identified conditions. As stated previously, §8.4 functions as an early warning system. When subsection (e) conditions have been identified, the Department will typically contact the insurer for further investigation.

For: Texas Builders Insurance Company.

Against: Gardere Wynn, Texas Mutual Insurance Company, American Insurance Association, and American International Group.

The new section is adopted under the Insurance Code Articles 1.32, 5.55C, 21.28-A, 1.15B, and §36.001. Article 1.32 authorizes the commissioner of insurance to adopt rules to fix uniform standards and criteria for early warning that the continued operation of an insurer might be hazardous to its policyholders, creditors, or the general public, and to fix standards for evaluating the financial condition of an insurer. Article 5.55C authorizes the commissioner of insurance to require insurers to offer

optional deductible plans and requires the adoption of rules that provide for adequate security for reimbursement of the amount paid by the company which is payable from the deductible. Article 21.28-A authorizes the Department to remedy insurer misconduct. Article 1.15B authorizes the Department to consider any information obtained by the Department's early warning system or information relating to the financial solvency of any organization regulated by the Department as confidential and is not subject to disclosure under the open records laws. Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§8.4. Hazardous Conditions Related to Negotiated Deductible Workers' Compensation Policies.

(a) This section applies to insurers that offer negotiated deductible workers' compensation policies in Texas and is to be followed in conjunction with The Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance. This section, along with conditions set out in §8.3 of this chapter relating to hazardous conditions, sets forth the various conditions that the Department will consider to determine whether an insurer issuing workers' compensation policies with a negotiated deductible is in a hazardous financial condition. The existence of one or more of the following conditions does not necessarily mean that an insurer issuing workers' compensation policies with a negotiated deductible is in hazardous financial condition. When one or more of the conditions are found to exist, they will be considered in the context of the state of affairs of an insurer. If the Department determines that the insurer is in a condition hazardous to policyholders, creditors, and the general public, it will initiate appropriate regulatory action.

(b) The insurer remains liable for all valid claims even if it appears that the insurer will ultimately not be reimbursed as provided in the workers' compensation policy with a negotiated deductible as referenced in Rule XIX - Deductible Programs of The Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers Compensation and Employers' Liability Insurance.

(c) In order to mitigate the risk of being in a potentially hazardous financial condition, this section addresses the insurer's maintenance of the fund of money over and above surplus and premiums to serve as security to protect the workers and the insurer in the event of a policyholder failure to reimburse the insurer for losses. This security shall be used to secure the policyholder's reimbursement of the negotiated deductible amount owed to the insurer.

(d) The following words and terms used in this section shall have the following meanings unless the context clearly indicates otherwise:

- (1) Department--Texas Department of Insurance.
- (2) Workers' compensation policy with a negotiated deductible--A policy in which the insurer assumes full liability for the statutory obligation of the employer policyholder within the scope of workers' compensation coverage while the policyholder assumes a contractual obligation to the insurer to reimburse the insurer for claims paid up to the deductible amount under Insurance Code Article 5.55C.
- (3) First dollar losses--Total losses before applying the negotiated deductible.
- (4) Gross premium--Premium calculated before factoring in the negotiated deductible.
- (e) An insurer who writes a workers' compensation policy with a negotiated deductible may be found to be in hazardous condition

when one or more of the conditions described in paragraphs (1) - (10) of this subsection are found to exist by the Department:

(1) the insurer fails to produce a written report with conclusions that is signed by an authorized insurer representative that is derived from a credit analysis performed as a part of the insurer's initial underwriting function and thereafter annually to determine the policyholder's ability to pay the obligations under the policy;

(2) the insurer fails to perform a quarterly review of the sufficiency of the security maintained by the insurer to secure the policyholder's obligations to reimburse the insurer for claims paid and credit taken against reserves for each policy up to the negotiated deductible amount;

(3) the insurer issues a workers' compensation policy that contains a negotiated deductible that does not state a specific dollar amount;

(4) the insurer issues a per accident negotiated deductible policy and fails to include an actuarially supported calculation of the total amounts owed by the policyholder and credit taken against reserves for all amounts through ultimate loss development;

(5) from the inception of the policy through ultimate loss development, the insurer fails to maintain security for 100% of claims paid and credit taken against reserves for each policy;

(6) the insurer fails to maintain security for any asset or credit taken against reserves in the following forms:

(A) cash;

(B) securities readily marketable over a national exchange with maturity date of not later than one year, listed by the Securities Valuation Office of the National Association of Insurance Commissioners, and qualifying as admitted assets; or

(C) clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in Insurance Code Article 5.75-1. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; provided however, that a letter of credit must be replaced within three months after the date of the institution's failure to meet applicable standards of issuer acceptability;

(7) the insurer fails to provide to the policyholder documentation separate from the workers' compensation policy explaining the financial responsibility of both the insurer's obligation to pay all claims and the policyholder's obligation to reimburse the insurer for any negotiated deductible amounts paid by the insurer;

(8) the insurer fails to maintain or produce upon the Department's request, gross premium data and first-dollar loss data for each workers' compensation policy with a negotiated deductible on a quarterly basis in accordance with, or in a substantially similar format as, the Texas Negotiated Deductible Workers' Compensation Form. Information provided by insurers in accordance with the Texas Negotiated Deductible Workers' Compensation Form is considered confidential under Insurance Code Article 1.15B and is not subject to disclosure under the Texas Public Information Act. The Texas Negotiated Deductible Workers' Compensation Form, herein adopted by reference, is available from the Department at: Financial Analysis and Examinations, Mail Code 303-1A, P.O. Box 149099, Austin, Texas 78714-9099;

(9) the insurer's assets or credits taken against the loss reserves in the financial statements are greater than the deductible amounts that are probable and expected to be recovered; or

(10) the administration or adjustment of claims is performed by a person or entity that is not licensed by the Department in accordance with §65.10(1)(I) and (M) of this title (relating to Actions by Carrier, Claimant's Attorney, or Agent).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 10, 2005.

TRD-200500110

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

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Proposal publication date: October 29, 2004

For further information, please call: (512) 463-6327

TITLE 34. PUBLIC FINANCE

PART 10. TEXAS PUBLIC FINANCE AUTHORITY

CHAPTER 221. DISTRIBUTION OF BOND PROCEEDS

34 TAC §§221.2, 221.3, 221.6

The Texas Public Finance Authority adopts amendments to 34 TAC Chapter 221, §§221.2, 221.3, and 221.6, concerning the distribution of bond proceeds without changes to the text as published in the November 12, 2004, issue of the *Texas Register* (29 TexReg 10465). The rules will not be republished.

The amendments to §221.2 update citations to the Texas Government Code and the Constitution. The amendments to §221.3 update guidance to client agencies for the submission of financing requests to conform to the Board's current meeting schedule and procedures for competitive bond sales. The amendments to §221.6 update the statutory citation.

No comments were received concerning the proposed amendments.

The amendments are adopted under the authority of Texas Government Code, §1232.067, which authorizes the board of the authority to adopt rules reasonably necessary for the board to administer its functions, and §1232.113, which requires the board to establish by rule a complaint process for client agencies.

The amendments affect the Texas Constitution, Article III, §§49-h, 49-e, 49-l, 49-n, and 50-f and Texas Government Code, Chapters 1232 and 1403.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 11, 2005.

TRD-200500117
Kimberly Edwards
Executive Director
Texas Public Finance Authority
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Proposal publication date: November 12, 2004
For further information, please call: (512) 463-5544



CHAPTER 225. MASTER LEASE PURCHASE PROGRAM

34 TAC §§225.1, 225.3, 225.5, 225.7

The Texas Public Finance Authority adopts amendments to 34 TAC Chapter 225, §§225.1, 225.3, 225.5, and 225.7, concerning the master lease purchase program without changes to the text as published in the November 12, 2004, issue of the *Texas Register* (29 TexReg 10465). The rules will not be republished.

The amendments to §225.1 update the citation to the statutory authority for the program from the revised civil statute to the Texas Government Code. The amendments to §225.3 update definitions to update legal citations and conform to master lease program changes. The amendments to §225.5 update the name of the Building and Procurement Commission, the procedures for paying lease obligations, and the maximum amount of the program to conform the rules to current state practice and changes in the master lease program. The amendments to §225.7 conform the rule to master lease program changes.

No comments were received concerning the proposed amendments.

The amendments are adopted under the authority of Texas Government Code, §1232.067, which authorizes the board of the authority to adopt rules reasonably necessary for the board to administer its functions, §1232.113, which requires the board to establish by rule a complaint process for client agencies, and §1232.103, which requires the board to adopt rules to ensure compliance with master lease program requirements.

The amendments affect Texas Government Code, Chapter 1232.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kimberly Edwards
Executive Director
Texas Public Finance Authority
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For further information, please call: (512) 463-5544



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 28. DNA DATABASE

The Texas Department of Public Safety (DPS) adopts the repeal of Chapter 28, Subchapters A - D and F - H, §§28.1 - 28.6, 28.21 - 28.31, 28.41 - 28.48, 28.61 - 28.67, 28.81 - 28.90, 28.101 - 28.110, and 28.121 - 28.132, concerning DNA Database, without changes to the proposal as published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11308).

The repeal of the sections is necessary due to renaming of the chapter and because substantial changes have been made. New Chapter 28 rules are being adopted simultaneously which promulgate the rules and regulations as provided under House Bill 2703, 78th Legislature (Regular Session) and codified at Texas Government Code, §411.0205 and §411.0206.

No comments were received regarding adoption of the repeal.

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §§28.1 - 28.6

The repeal is adopted pursuant to Texas Government Code, §411.144, which requires the DPS director to establish standards and procedures for collection, preservation, shipment, analysis, and permissible uses of DNA information; §411.0205, which provides that the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings; §411.147, which authorizes the director by rule to prevent unauthorized access to the DNA database; §411.152, which authorizes the director to adopt rules to administer the DNA database system; and §411.1471 and §411.1472, which provide the director with authority to require law enforcement agencies taking specimens to follow certain procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200500195
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135



SUBCHAPTER B. RESPONSIBILITIES OF THE DEPARTMENT

37 TAC §§28.21 - 28.31

The repeal is adopted pursuant to Texas Government Code, §411.144, which requires the DPS director to establish standards and procedures for collection, preservation, shipment, analysis, and permissible uses of DNA information; §411.0205, which provides that the director by rule shall establish an

accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings; §411.147, which authorizes the director by rule to prevent unauthorized access to the DNA database; §411.152, which authorizes the director to adopt rules to administer the DNA database system; and §411.1471 and §411.1472, which provide the director with authority to require law enforcement agencies taking specimens to follow certain procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200500196

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



SUBCHAPTER C. RESPONSIBILITIES OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE INSTITUTIONAL DIVISION

37 TAC §§28.41 - 28.48

The repeal is adopted pursuant to Texas Government Code, §411.144, which requires the DPS director to establish standards and procedures for collection, preservation, shipment, analysis, and permissible uses of DNA information; §411.0205, which provides that the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings; §411.147, which authorizes the director by rule to prevent unauthorized access to the DNA database; §411.152, which authorizes the director to adopt rules to administer the DNA database system; and §411.1471 and §411.1472, which provide the director with authority to require law enforcement agencies taking specimens to follow certain procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



SUBCHAPTER D. RESPONSIBILITIES OF THE TEXAS YOUTH COMMISSION; DNA RECORDS OF CERTAIN JUVENILES

37 TAC §§28.61 - 28.67

The repeal is adopted pursuant to Texas Government Code, §411.144, which requires the DPS director to establish standards and procedures for collection, preservation, shipment, analysis, and permissible uses of DNA information; §411.0205, which provides that the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings; §411.147, which authorizes the director by rule to prevent unauthorized access to the DNA database; §411.152, which authorizes the director to adopt rules to administer the DNA database system; and §411.1471 and §411.1472, which provide the director with authority to require law enforcement agencies taking specimens to follow certain procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



SUBCHAPTER F. REGULATION OF CODIS USER LABORATORIES

37 TAC §§28.81 - 28.90

The repeal is adopted pursuant to Texas Government Code, §411.144, which requires the DPS director to establish standards and procedures for collection, preservation, shipment, analysis, and permissible uses of DNA information; §411.0205, which provides that the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings; §411.147, which authorizes the director by rule to prevent unauthorized access to the DNA database; §411.152, which authorizes the director to adopt rules to administer the DNA database system; and §411.1471 and §411.1472, which provide the director with authority to require law enforcement agencies taking specimens to follow certain procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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SUBCHAPTER G. RESTRICTED DNA RECORD OF A PERSON RELEASED ON BAIL, CHARGED WITH, PLACED ON COMMUNITY SUPERVISION FOR, OR CONVICTED OF CERTAIN OFFENSES

37 TAC §§28.101 - 28.110

The repeal is adopted pursuant to Texas Government Code, §411.144, which requires the DPS director to establish standards and procedures for collection, preservation, shipment, analysis, and permissible uses of DNA information; §411.0205, which provides that the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings; §411.147, which authorizes the director by rule to prevent unauthorized access to the DNA database; §411.152, which authorizes the director to adopt rules to administer the DNA database system; and §411.1471 and §411.1472, which provide the director with authority to require law enforcement agencies taking specimens to follow certain procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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SUBCHAPTER H. ACCREDITATION

37 TAC §§28.121 - 28.132

The repeal is adopted pursuant to Texas Government Code, §411.144, which requires the DPS director to establish standards and procedures for collection, preservation, shipment, analysis, and permissible uses of DNA information; §411.0205, which provides that the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings; §411.147, which authorizes the director by rule to prevent unauthorized access to the DNA database; §411.152, which authorizes the director to adopt rules to administer the DNA database system; and §411.1471 and

§411.1472, which provide the director with authority to require law enforcement agencies taking specimens to follow certain procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135



CHAPTER 28. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

The Texas Department of Public Safety (DPS) adopts new Chapter 28, Subchapters A - I, §§28.1 - 28.7, 28.21 - 28.28, 28.41 - 28.48, 28.61 - 28.66, 28.81, 28.82, 28.91 - 28.99, 28.111 - 28.120, 28.131 - 28.137, 28.139 - 28.141, and 28.151 - 28.157, concerning DNA, CODIS, Forensic Analysis, and Crime Laboratories, without changes to the proposed text as published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11312) and will not be republished. Section 28.138 is adopted with changes and will be republished.

The new sections promulgate the rules and regulations as provided under House Bill 2703, 78th Texas Legislature (Regular Session) and codified under Government Code §411.0205 and §411.0206. The adopted rules also make extensive non-substantive revisions to existing rules under the authority of subchapter G of Chapter 411 of the Government Code.

As required by Government Code §2001.033(1), the director's reasoned justification for the rules is set out in this order. The order includes the preamble and the rules. The preamble contains a summary of the factual basis of the rule, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were for or against adoption of the rules, and the reasons why the director disagrees with comments and proposals.

Persons and groups who have provided comments regarding adoption of specific sections of the rules as proposed are the following: Nueces County; Federal Bureau of Investigation Forensic Laboratory. Changes to the new rules were made to the rules as detailed below. No comments were received regarding the adoption of the repeals.

Subchapter A is adopted in order to set out the definitions for the chapter to clarify administration provisions of the DNA database system and the department's participation in the national DNA identification index system (CODIS) as authorized under Subchapter G of Chapter 411 of the Government Code. The definitions also provide terms used in the accreditation process for crime laboratories as well as the new regulatory system for DNA laboratories as authorized under House Bill 2703 and codified under Government Code §411.0205 and §411.0206. The rules as adopted also contain non-substantive style revisions

and conforming changes to update terminology used throughout the chapter. Adoption of the rules will enable the department to more effectively administer the regulations authorized by the applicable statutory provisions.

Comment: Comment proposes amending the definition of "Integrity or trustworthiness" contained in §28.1 by adding subparagraph (C) that would provide that integrity or trustworthiness includes "timeliness of production of a testing or analysis result to a requesting agency." Comment also proposes adding a definition of "timeliness or timely manner" that would be defined as "submission of a testing or analysis result to a requesting entity in a manner to reasonably allow for the requesting entity to comply with 17.151 of the Code of Criminal Procedure." Comment asserts that the changes are necessary because timeliness of the production of crime laboratory results is as important as its integrity and trustworthiness. Comment asserts that this is the case because delay in the production of a State-operated crime laboratory results in direct uncompensated fiscal impact to counties. Comment asserts that the rules should clearly state that a crime laboratory not producing testing or analysis results in a timely manner should be found to be in substantial deficiency, in that it has failed to meet operational standards.

Response: The department agrees that timeliness in laboratory results is a critical element. However, as the rules are applicable to all forensic laboratories operating within the state of Texas, it would be inappropriate to impose a "timeliness" requirement for analysis at this time since the requirement would result in a significant hardship to participating laboratories. This is because many government crime laboratories provide analysis services to client law enforcement agencies at no cost to those agencies. Imposing timeliness requirements on the laboratories would force government laboratories to absorb significant increases in workload without sufficient funding to achieve the requirement. As additional funding is not available at this time, the department believes that the better approach is for laboratories to work closely with client law enforcement agencies and prosecutors to cooperatively determine case priorities and testing requirements based on the needs of the client and the availability of laboratory resources. No changes to the regulations were made based on the comment.

Comment: Comment suggests that the department acquire information from specialists in the field of testing and analysis of crime laboratory materials for the purpose of incorporating a definitive set of timeliness standards in the rule. Comment proposes that an existing minimum general standard to incorporate for timely production exists in Article 17.151 of the Code of Criminal Procedure. Comment further asserts that the incorporation of a timeliness standard into the accreditation and operational standards of crime laboratories will provide prosecuting entities with the appropriate and necessary materials to seek timely prosecutions and relieve county government of the significant burden of detaining defendants awaiting trial in county facilities due to unnecessary laboratory delay.

Response: The department agrees that timeliness in laboratory results is a critical element. However, as the rules are applicable to all forensic laboratories operating within the state of Texas, it would be inappropriate to impose a "timeliness" requirement for analysis at this time since the requirement would result in a significant hardship to participating laboratories. This is because many government crime laboratories provide analysis services to client law enforcement agencies at no cost to

those agencies. Imposing timeliness requirements on the laboratories would force government laboratories to absorb significant increases in workload without sufficient funding to achieve the requirement. As additional funding is not available at this time, the department believes that the better approach is for laboratories to work closely with client law enforcement agencies and prosecutors to cooperatively determine case priorities and testing requirements based on the needs of the client and the availability of laboratory resources. No changes to the regulations were made based on the comment.

Subchapter B is adopted to set out the CODIS responsibilities of the director. The rules in the subchapter primarily contain non-substantive style revisions and conforming changes to update terminology used in the subchapter. The substantive requirements are essentially unchanged from the requirements in the subchapter that is repealed. The new rules will improve the department's function as the central depository in the state for DNA records and are necessary to administer or enforce the DNA database system. No comments were received regarding this subchapter.

Subchapter C is adopted to explain institutional CODIS responsibilities as provided under Subchapter G of Chapter 411 of the Government Code. The rules primarily contain non-substantive style revisions and conforming changes to update terminology and clarify practices. The substantive requirements are essentially unchanged from the requirements in the chapter that is currently proposed for repeal. The new rules will improve the department's function as the central depository in the state for DNA records and are necessary to administer or enforce the DNA database system. No comments were received regarding this subchapter.

Subchapter D is adopted to explain the CODIS responsibilities of the Texas Youth Commission as provided under Subchapter G of Chapter 411 of the Government Code. The rules in this subchapter primarily contain non-substantive style revisions and conforming changes to update terminology used in the subchapter. The substantive requirements are essentially unchanged from the requirements in the subchapter that is repealed. The new rules will improve the department's function as the central depository in the state for DNA records. Specific authority for the rules is provided under Government Code §411.150. No comments were received regarding this subchapter.

Subchapter E is adopted as a new subchapter to administer the regulation of forensic DNA laboratories that are not CODIS forensic laboratories. Administration of the rules is provided under the new authority contained in House Bill 2703 which added Government Code §411.0206 and authorizes the director to regulate DNA testing, including the regulation of DNA laboratories. Adoption of the rules will enable the department to administer a regulatory system for DNA laboratories.

Comment: Comment asserts that §28.82(f) be modified by deleting a requirement that a laboratory submit results of analysis to a criminal justice or law enforcement agency within 30 days after completing the report. The comment asserts that the requirement should be that the report be submitted "in a timely manner." The comment asserts that "timely manner" should be changed as proposed based on the comments provided under Subchapter A.

Response: The department agrees that analysis and report completion should be accomplished in a timely manner. As stated in earlier responses, the department does not believe

that laboratories can presently be required to complete analysis by a date certain. However, laboratories should be able to meet a basic objective date for submission of completed analysis to a client law enforcement agency and the requirement of 30 days is a reasonable expectation for a service level. No changes to the regulations were made based on the comment.

Subchapter F is adopted to administer the regulation of forensic DNA laboratories that are also CODIS forensic laboratories. Administration of the rules is provided under authority in Subchapter G of Chapter 411 as well as the new authority contained House Bill 2703 which added Government Code §411.0206 and authorizes the director to regulate DNA testing, including the regulation of DNA laboratories. Adoption of the rules will enable the department to administer a regulatory system for DNA laboratories. No comments were received regarding this subchapter.

Subchapter G is adopted to provide regulations for the administration of the restrictions for DNA records of persons released on bail, charged with, placed on community supervision for, or convicted of certain offenses. Administration of the rules is provided under the authority of Subchapter G of Government Code Chapter 411, as further detailed below, including §§411.1471, 411.1472, and 411.1531. The subchapter also contains conforming and nonsubstantive changes to update the current subchapter. The substantive requirements are essentially unchanged from the requirements in the subchapter that is repealed. Adoption of the regulations will clarify the administrative procedures of the program. No comments were received regarding this subchapter.

Subchapter H is adopted to update and renumber the subchapter concerning accreditation of crime laboratories. Administration of the rules is provided under authority contained House Bill 2703 which added Government Code §411.0205 and authorized the director to establish an accreditation process for crime laboratories. The substantive requirements are essentially unchanged from the requirements in the subchapter that is repealed. The adopted rules provide clarification of the minimum standards for accreditation as well as the department procedures for accreditation.

Comment: Comment was received that federal forensic laboratories should not be required to submit applications for accreditation by the department. Federal laboratories take the position that federal law prohibits a federal laboratory from operating under a state regulatory scheme.

Response: Staff agreed with this comment. Based on this comment a change was made to subchapter H as follows: §28.138 is amended to add subsection (e) to provide that federal forensic laboratories are deemed accredited by the director if they are accredited by a recognized accrediting body. Federal forensic laboratories are also not subject to the reporting requirements of subchapter H or the complaint and review process of subchapter I.

Subchapter I is a new subchapter that is adopted to lay out the complaint, special review and disciplinary action process that will be administered by the department under the authority of House Bill 2703, 78th Legislature, Regular Session, which added Government Code §411.0205 which provides that the DPS director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings, and §411.0206 which

provides that the director shall by rule regulate DNA testing, including regulation of DNA laboratories. The purpose of the proposed sections is to implement the DPS accreditation and regulation process as provided by that law by establishing a review process. No comments were received regarding this subchapter.

SUBCHAPTER A. DEFINITIONS AND GENERAL CODIS PROVISIONS

37 TAC §§28.1 - 28.7

The new sections are adopted pursuant to Texas Government Code, §411.144, which requires the DPS director to establish standards and procedures for collection, preservation, shipment, analysis, and permissible uses of DNA information; §411.0205, which provides that the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings; §411.0206, which authorizes the director to adopt rules regulating DNA testing; §411.147, which authorizes the director by rule to prevent unauthorized access to the DNA database; §411.152, which authorizes the director to adopt rules necessary to administer the DNA database system; and §411.1471 and §411.1472, which authorize the director to adopt rules for law enforcement agencies taking certain specimens.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200500201

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



SUBCHAPTER B. CODIS RESPONSIBILITIES OF THE DIRECTOR

37 TAC §§28.21 - 28.28

The new sections are adopted pursuant to Texas Government Code, §411.144, which requires the DPS director to establish standards and procedures for collection, preservation, shipment, analysis, and permissible uses of DNA information; §411.0205, which provides that the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings; §411.0206, which authorizes the director to adopt rules regulating DNA testing; §411.147, which authorizes the director by rule to prevent unauthorized access to the DNA database; §411.152, which authorizes the director to adopt rules necessary to administer the DNA database system; and §411.1471 and §411.1472, which authorize the director to adopt rules for law enforcement agencies taking certain specimens.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

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SUBCHAPTER C. CODIS RESPONSIBILITIES OF THE INSTITUTIONAL DIVISION

37 TAC §§28.41 - 28.48

The new sections are adopted pursuant to Texas Government Code, §411.144, which requires the DPS director to establish standards and procedures for collection, preservation, shipment, analysis, and permissible uses of DNA information; §411.0205, which provides that the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings; §411.0206, which authorizes the director to adopt rules regulating DNA testing; §411.147, which authorizes the director by rule to prevent unauthorized access to the DNA database; §411.152, which authorizes the director to adopt rules necessary to administer the DNA database system; and §411.1471 and §411.1472, which authorize the director to adopt rules for law enforcement agencies taking certain specimens.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

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SUBCHAPTER D. CODIS RESPONSIBILITIES OF THE TEXAS YOUTH COMMISSION

37 TAC §§28.61 - 28.66

The new sections are adopted pursuant to Texas Government Code, §411.144, which requires the DPS director to establish standards and procedures for collection, preservation, shipment, analysis, and permissible uses of DNA information; §411.0205,

which provides that the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings; §411.0206, which authorizes the director to adopt rules regulating DNA testing; §411.147, which authorizes the director by rule to prevent unauthorized access to the DNA database; §411.152, which authorizes the director to adopt rules necessary to administer the DNA database system; and §411.1471 and §411.1472, which authorize the director to adopt rules for law enforcement agencies taking certain specimens.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



SUBCHAPTER E. FORENSIC DNA LABORATORIES

37 TAC §§28.81, §28.82

The new sections are adopted pursuant to Texas Government Code, §411.144, which requires the DPS director to establish standards and procedures for collection, preservation, shipment, analysis, and permissible uses of DNA information; §411.0205, which provides that the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings; §411.0206, which authorizes the director to adopt rules regulating DNA testing; §411.147, which authorizes the director by rule to prevent unauthorized access to the DNA database; §411.152, which authorizes the director to adopt rules necessary to administer the DNA database system; and §411.1471 and §411.1472, which authorize the director to adopt rules for law enforcement agencies taking certain specimens.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Thomas A. Davis, Jr.

Director

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SUBCHAPTER F. CODIS USER LABORATORIES

37 TAC §§28.91 - 28.99

The new sections are adopted pursuant to Texas Government Code, §411.144, which requires the DPS director to establish standards and procedures for collection, preservation, shipment, analysis, and permissible uses of DNA information; §411.0205, which provides that the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings; §411.0206, which authorizes the director to adopt rules regulating DNA testing; §411.147, which authorizes the director by rule to prevent unauthorized access to the DNA database; §411.152, which authorizes the director to adopt rules necessary to administer the DNA database system; and §411.1471 and §411.1472, which authorize the director to adopt rules for law enforcement agencies taking certain specimens.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2005.

TRD-200500206

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Effective date: February 7, 2005

Proposal publication date: December 3, 2004

For further information, please call: (512) 424-2135



SUBCHAPTER G. RESTRICTED DNA RECORD OF A PERSON RELEASED ON BAIL, CHARGED WITH, PLACED ON COMMUNITY SUPERVISION FOR, OR CONVICTED OF CERTAIN OFFENSES

37 TAC §§28.111 - 28.120

The new sections are adopted pursuant to Texas Government Code, §411.144, which requires the DPS director to establish standards and procedures for collection, preservation, shipment, analysis, and permissible uses of DNA information; §411.0205, which provides that the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings; §411.0206, which authorizes the director to adopt rules regulating DNA testing; §411.147, which authorizes the director by rule to prevent unauthorized access to the DNA database; §411.152, which authorizes the director to adopt rules necessary to administer the DNA database system; and §411.1471 and §411.1472, which authorize the director to adopt rules for law enforcement agencies taking certain specimens.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2005.

TRD-200500207

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Effective date: February 7, 2005

Proposal publication date: December 3, 2004

For further information, please call: (512) 424-2135



SUBCHAPTER H. ACCREDITATION

37 TAC §§28.131 - 28.141

The new sections are adopted pursuant to Texas Government Code, §411.144, which requires the DPS director to establish standards and procedures for collection, preservation, shipment, analysis, and permissible uses of DNA information; §411.0205, which provides that the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings; §411.0206, which authorizes the director to adopt rules regulating DNA testing; §411.147, which authorizes the director by rule to prevent unauthorized access to the DNA database; §411.152, which authorizes the director to adopt rules necessary to administer the DNA database system; and §411.1471 and §411.1472, which authorize the director to adopt rules for law enforcement agencies taking certain specimens.

§28.138. *Full DPS Accreditation.*

(a) Issuance and renewal. The director may issue or renew voluntary or statutory accreditation under this section.

(b) Application. An applicant for full DPS accreditation shall complete and submit to the director a current form LAB-5 and attach copies of the following:

(1) an accreditation certificate and letter of notification of accreditation from a recognized accrediting body; and

(2) each document provided by the recognized accrediting body that identifies the discipline or subdiscipline for which the laboratory has received accreditation and any limitation or restriction regarding that accreditation.

(c) Additional information. The director may require additional information to properly evaluate the application either as part of the original application or as supplemental information.

(d) Reports to director.

(1) If accredited by ASCLD/LAB, a laboratory shall provide the director with a copy of each *Annual Accreditation Review Report*. If accredited by another recognized accrediting body, a laboratory shall provide the director with a copy of each equivalent annual accreditation assessment document. The copy shall be submitted to the director at the same time that it is due to the recognized accrediting body.

(2) A laboratory shall provide the director with a copy of correspondence and each report or communication between the laboratory and the recognized accrediting body. The laboratory shall submit the copy to the director no later than 30 days after the date the laboratory receives or transmits the correspondence, report, or communication.

(3) A laboratory that discontinues a specific forensic discipline or subdiscipline:

(A) if known beforehand, should submit written notification to the director at least 30 days before the effective date of the discontinuation; or

(B) if unknown beforehand, shall submit written notification to the director at least 5 business days after the effective date of the discontinuation.

(e) Federal forensic laboratories. A federal forensic laboratory is deemed to be accredited by the director without application provided that the laboratory is accredited by a recognized accrediting body as provided under §28.134 of this subchapter (relating to List of Recognized Accrediting Bodies). A laboratory deemed accredited is not subject to the reporting requirements of this subchapter or the processes provided under Subchapter I of this chapter (relating to Complaints, Special Review, and Disciplinary Action).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2005.

TRD-200500208
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: February 7, 2005
Proposal publication date: December 3, 2004
For further information, please call: (512) 424-2135



SUBCHAPTER I. COMPLAINTS, SPECIAL REVIEW, AND DISCIPLINARY ACTION

37 TAC §§28.151 - 28.157

The new sections are adopted pursuant to Texas Government Code, §411.144, which requires the DPS director to establish standards and procedures for collection, preservation, shipment, analysis, and permissible uses of DNA information; §411.0205, which provides that the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings; §411.0206, which authorizes the director to adopt rules regulating DNA testing; §411.147, which authorizes the director by rule to prevent unauthorized access to the DNA database; §411.152, which authorizes the director to adopt rules necessary to administer the DNA database system; and §411.1471 and §411.1472, which authorize the director to adopt rules for law enforcement agencies taking certain specimens.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2005.

TRD-200500209
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: February 7, 2005
Proposal publication date: December 3, 2004
For further information, please call: (512) 424-2135



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Texas Department of Housing and Community Affairs

Title 10, Part 1

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (Department) proposes the review of 10 TAC Chapter 80, Manufactured Housing, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the Department will accept comments as to whether the reasons for adopting 10 TAC Chapter 80 continue to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Timothy K. Irvine, Executive Director of the Manufactured Housing Division, of the Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78711-2489 or by e-mail to tim.irvine@tdhca.state.tx.us.

TRD-200500175

Timothy K. Irvine

Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Filed: January 13, 2005

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §68.80(b)

<u>Construction Cost</u>	<u>Review Fee</u>	<u>Inspection Fee</u>
\$ 50,000 – \$ 200,000	\$250	\$350
\$ 200,001 – \$ 500,000	\$315	\$375
\$ 500,001 – \$ 1,000,000	\$380	\$400
\$ 1,000,001 – \$ 5,000,000	\$445	\$445
\$ 5,000,001 – \$10,000,000	\$575	\$575
\$10,000,001 – \$15,000,000	\$620	\$620
\$15,000,001 – \$25,000,000	\$785	\$785
\$25,000,001 – \$50,000,000	\$955	\$955
\$50,000,001 – \$75,000,000	\$1,175	\$1,175
> \$75,000,000	Contact TDLR for negotiated fee	

Inspection of State Leases (no construction involved)

Preliminary Review Fee	- \$225 per lease
Special Inspection Fee	- \$145 each
Variance Application Fee	- \$215 per hour, one hour minimum
Variance Appeal Fee	- \$175 each
Project Filing Fee	- \$200
Late Project Filing Fee	- \$175
Replacement Notices	- \$300
	- \$ 25 each

Registered Accessibility Specialist:

	<u>Single Endorsement</u>	<u>Dual Endorsement</u>
Application for Certificate of Registration	- \$200	\$300
Registration Renewal	- \$150	\$250
Texas Accessibility Academy Entrance Fee	- \$150	
Examination	- \$100	
Wall Certificate Duplicate or Replacement	- \$ 25	
Wallet Card Duplicate or Replacement	- \$ 25	
Revised Registration	- \$ 25	
Add or Subtract Endorsement	- \$ 25	

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice of Settlement of CERCLA Natural Resource Damages Claim

Notice is hereby given by the State of Texas of the following proposed resolution of a claim for natural resource damages under the Comprehensive Environmental Response, Compensation, and Liability Act and applicable state law. The State of Texas, on behalf of Texas Commission on Environmental Quality ("TCEQ"), the Texas General Land Office ("GLO"), and the Texas Parks and Wildlife Department ("TPWD") (collectively, the "State Trustees") has reached an agreement with Chevron U.S.A. Inc., Chevron Environmental Management Co., and Chevron Phillips Chemical Company, LP ("Chevron") to resolve Chevron's liability for natural resource damages at the Port Arthur Refinery ("Refinery") in Point Arthur, Jefferson County. The Attorney General will consider any written comments received on the settlement within 30 days of the date of publication of this notice.

Case Title and Court: *United States and State of Texas v. Chevron U.S.A. Inc., Chevron Environmental Management Co., and Chevron Phillips Chemical Company, LP*, in the United States District Court for the Eastern District of Texas, Beaumont Division, Civil Action No. 1:05CV0021.

Background: Chevron operated the Refinery in Jefferson County, Texas, located near the J.D. Murphree Wildlife Management Area, a part of the Lower Neches River system, since the early 1900s. In June 1997, Chevron initiated an environmental investigation at and adjacent to the Refinery and undertook certain corrective measures for high priority areas at the Refinery and adjacent areas (the "Site"). In June 1999, using data gathered by Chevron during various investigations and studies at the Site the State Trustees and Chevron began a cooperative assessment to evaluate potential injury to, loss or destruction of natural resources and resource services at the Site resulting from historical releases of hazardous substances and/or oil at the Site. The assessment showed that hazardous substances were present in soil, surface water, sediments, and groundwater at the Site. Based on that assessment, the Trustees determined that the release of hazardous substances and/or oil at the Site caused Natural Resource Damages in areas at the Site, including but not limited to, the open water, sediments, wetlands, and terrestrial habitats, to birds, terrestrial receptors, benthic aquatic invertebrates, and alterations in benthic invertebrate community.

In December 1999, Chevron performed an emergency restoration project at the State-owned J.D. Murphree Wildlife Management Area ("WMA") located near the Site. For the emergency restoration project, Chevron provided pumps and fuel to pump water into impoundments at the J.D. Murphree WMA in order to provide habitat and shelter for migratory birds during severe drought conditions.

Nature of the Settlement: The Consent Decree requires Chevron to undertake three restoration projects to restore the natural resources injured by releases of hazardous substances and/or oil at the Site to be undertaken in state-owned wildlife management areas: the Jefferson County ("J.C.") Wetlands Restoration Project, the Old River South ("ORS") Water Control Structures Restoration Project, and the ORS

Marsh Complex and Wet Prairie Restoration Project. For the J.C. Wetlands Restoration Project, Chevron will construct water control structures and levees that will be used by the State of Texas to restore hydrology and historical salinity gradients to the J. D. Murphree WMA. For the ORS Water Control Structures Restoration Project at the Lower Neches Wildlife Management Area, Chevron will construct a low water plug and eight culverts to be used by the State of Texas to better manage and improve impoundments used for bird and wildlife habitat. For the ORS Marsh Complex and Wet Prairie Restoration Project at the Lower Neches Wildlife Management Area, Chevron will create eighty-five (85) acres of marsh and thirty (30) acres of coastal wet prairie to enhance productivity of the ecosystems utilized by birds, fish, and other creatures.

The estimated costs of implementing the restoration projects required by the NRD Decree is \$4.4 million.

Proposed Settlement: The proposed settlement will resolve the Settling Defendants' liability to the State for Natural Resource Damages at the Site. In addition, the Settling Defendants' will reimburse the State Trustees for the cost of assessing the damage to the State's natural resources.

Public Comment: The Office of the Attorney General will receive comments relating to the proposed Agreed Final Judgment for 30 days following publication of this Notice. Comments should be addressed to Albert M. Bronson, Assistant Attorney General, Natural Resources Division, P.O. Box 12548, Austin, TX 78711-2548 and should refer to *United States and State of Texas v. Chevron U.S.A. Inc., Chevron Environmental Management Co., and Chevron Phillips Chemical Company, LP*. The proposed Agreed Final Judgment may be examined at the Office of the Attorney General, 300 West 15th Street, 10th Floor, Austin, Texas by appointment. A copy of the proposed Agreed Final Judgment may be obtained by mail from the Office of the Attorney General. In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of \$15 for the Decree (without attachments), payable to the State of Texas.

For information regarding this publication you may contact A.G. Younger, Agency Liaison, at (512) 463-2110.

TRD-200500239

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: January 18, 2005



Texas Water Code Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under Texas Water Code § 7.110. Before the State may settle a judicial enforcement action under Chapter 7 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments

disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *Harris County, Texas and State of Texas v. Akzo Nobel Catalysts, L.L.C.*, Cause No.2004-24140, in the 133rd District Court of Harris County, Texas

Nature of Defendant's Operations: At the time of filing of this lawsuit, Akzo Nobel Catalysts, L.L.C. owned and operated a fertilized manufacturing facility at 13000 Bay Port Road, Pasadena, Texas. Harris County filed suit under the Texas Water Code, Chapter 7, and the Texas Clean Air Act, Tex. Health & Safety Code, Chapter 382, claiming that Defendant Akzo Nobel discharged air contaminants from the facility at certain times between July and September 2001 in such concentration and duration as to interfere with the normal use and enjoyment of property. The State of Texas, acting through the Texas Commission on Environmental Quality, was a necessary party to Harris County's suit pursuant to Tex. Water Code 7.353.

Proposed Agreed Judgment: The proposed Agreed Final Judgment awards civil penalties of \$8,218 each to Harris County and the State, and attorney's fees of \$1,000 each to Harris County and the State. The company installed needed improvements and the violations have not reoccurred.

For a complete description of the proposed settlement, the complete proposed Amended Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Burgess Jackson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication you may contact A.G. Younger, Agency Liaison, at (512) 463-2110.

TRD-200500232
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: January 18, 2005

Texas Building and Procurement Commission

Request for Proposal

RFP Number: #303-5-10638

Opening Date/Time: February 10, 2005 at 3:00 PM

Description: Lease requirement for approximately 1,178 sq. ft. of Office Space in Mesquite, Dallas County, Texas

Agency: Adjutant General (AG)

Purchaser/Contact: Kenneth Ming (512) 463-2743
or through the Electronic State Business Daily at:
http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=57202

TRD-200500178
Mark Gentle
Legal Counsel
Texas Building and Procurement Commission
Filed: January 13, 2005

Request for Proposal

RFP Number: #303-5-10633

Opening Date/Time: February 4, 2005 at 3:00 PM

Description: Lease requirement for approximately 1,336 sq. ft. of Office/Lab Space in the City of Crockett, Houston County, Texas

Agency: Texas Animal Health Commission (TAHC)

Purchaser/Contact: Kenneth Ming (512) 463-2743 or through the Electronic State Business Daily at:

http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=57216

TRD-200500229
Mark Gentle
Legal Counsel
Texas Building and Procurement Commission
Filed: January 18, 2005

Request for Proposals

RFP Number: #303-5-10622

Opening Date/Time: February 7, 2005 at 3:00 PM

Description: Lease requirement for approximately 900 sq. ft. of lease space which consist of three hundred (300) sq. ft. of climate-controlled work space and six hundred (600) sq. ft. of workshop/storage space in Sattler or Canyon Lake, Texas.

Agency: Texas Parks and Wildlife Department (TPWD)

Purchaser/Contact: Kenneth Ming (512) 463-2743
or through the Electronic State Business Daily at:
http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=57192

RFP Number: #303-5-10620

Opening Date/Time: February 3, 2005 at 3:00 PM

Description: Lease requirement for approximately 5,040 sq. ft. of boat storage space in Port Isabel, Texas.

Agency: Texas Parks and Wildlife Department (TPWD)

Purchaser/Contact: Kenneth Ming (512) 463-2743
or through the Electronic State Business Daily at:
http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=57182

TRD-200500180
Mark Gentle
Legal Counsel
Texas Building and Procurement Commission
Filed: January 14, 2005

Central Texas Regional Mobility Authority

Director of Operations Job Posting

The Central Texas Regional Mobility Authority ("CTRMA") seeks a Director of Operations ("DOO") for comprehensive administration and oversight of CTRMA toll road development and service programs. The CTRMA was created through the effort of Williamson County and Travis County with the intended purposes of implementing regional mobility solutions within the region. Its creation was approved by the Texas Department of Transportation ("TxDOT"). The CTRMA Board of Directors is comprised of six members appointed by the Travis and Williamson County Commissioners Courts and a Chairman appointed by the Governor. CTRMA is considering several other toll projects in the area, and has legislative authorization to pursue and develop a

variety of other transportation projects including but not limited to: regional airports, pedestrian and bicycle facilities; intermodal hubs; automated conveyors for freight movement; public utility facilities; and air quality improvement initiatives, including those related to any early action compacts. The adopted regional plan can be viewed on the CTRMA website, www.ctrma.org.

The DOO will plan, organize, supervise, prepare budgets for, and direct operations related to the CTRMA's toll road development and services programs, including but not limited to coordination with TxDOT, Traffic and business and "store management," vehicle enforcement, incident management, loss prevention and asset protection, and various administrative functions as required. The DOO will serve under and report to the Executive Director. The DOO will participate in the development, analysis, formulation and administration of the CTRMA Project Development and Operations budget; approve the forecast of funds needed for staffing, equipment, materials and supplies; administer assigned contracts, negotiate and prepare requests for proposals for contracts with external professional service providers and vendors; implement budgetary adjustments as appropriate and necessary; monitor and evaluate quality, responsiveness, efficiency and effectiveness of the programs, service delivery methods and procedures; respond to and resolve citizen inquiries and complaints regarding toll road development and toll services programs; and select, train, motivate and evaluate administrative, technical and clerical personnel for toll services operations. The DOO will represent CTRMA's Engineering and Operations Department to other CTRMA departments, elected officials and outside agencies and organizations, and will coordinate with such individuals and entities as needed.

It is desirable that the candidate possess either prior supervisory and administrative experience or prior experience with toll authorities. The candidate should possess knowledge of management business practices and functions, and advanced principles of budget preparation, analysis, forecasting and control. Effective communication skills are critical to the job, and the candidate should have the ability to communicate effectively, both orally and in writing, with CTRMA personnel, governmental officials, contractors, consultants, and the general public.

A Bachelor's Degree in Civil or Mechanical Engineering or a closely related field is required. Seven years previous experience and/or training, including prior supervisory and administrative experience, toll authority or highway operations experience, or an equivalent combination of education, training or experience, is preferred. The salary for the DOO position will be negotiated upon final selection of a qualified candidate.

The CTRMA is an Equal Opportunity Employer, and in accordance with the Americans with Disabilities Act, will provide reasonable accommodations to qualified individuals with disabilities and encourages prospective employees to discuss potential accommodations with the CTRMA. The tasks associated with this position involve moderate physical exertion (standing, walking, stooping, kneeling, crouching and crawling, which may involve some lifting, carrying, pushing or pulling of objects weighing from 12-20 pounds). Some tasks require oral communications ability, visual perception and discrimination, and ability to perceive and discriminate sounds. Tasks are regularly performed without exposure to adverse environmental conditions, such as dirt, dust, pollen, odors, fumes, etc.

To apply please send cover letter and resume to:

CTRMA Director of Operations

Attention: Cindy Forkner

Central Texas Regional Mobility Authority

13640 Briarwick Drive, Suite 200

Austin, Texas 78729

(512) 996-9778

Email Address: cforkner@ctrma.org

Questions concerning this posting may be directed to the same address. CTRMA will continue to accept resumes until the position is filled. Resumes will be accepted by hard copy, facsimile or email.

TRD-200500249

Mike Heiligenstein

Executive Director

Central Texas Regional Mobility Authority

Filed: January 19, 2005

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of January 6, 2005, through January 13, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on January 12, 2005. The public comment period for these projects will close at 5:00 p.m. on February 11, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Devon Energy Production Company, L.P.; Location: The project is located in Greens Lake, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Virginia Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 305821; Northing: 3239662. Project Description: The applicant proposes to drill for petroleum resources, install structures, install an 8-inch maximum pipeline (up to 9965.7 feet), install an 8-inch maximum sales pipeline (up to 11822.15 feet), dredge an access channel (up to 4334 feet) and basins, stabilize shoreline, and construct dredge material placement areas. Approximately 4,500 cubic yards of shell, crushed rock, or washed gravel will be used as a base for proposed the Well No. 1. Approximately 11.3 acres of shallow, nonvegetated bay substrate would be excavated for the proposed access channel to this well and for its initial drilling basin. If the first well is productive, Well Nos. 2-5 may be drilled as shown in the attached plans. Approximately 2.8 acres of additional shallow bay substrate would be excavated for the basins associated with those wells. No wetlands or seagrasses would be impacted by dredging, drilling, or pipeline installation.

Prior to selecting the proposed project, the applicant evaluated alternative means of drilling the proposed wells. Drilling from uplands and onshore wetlands in the project area was considered. Due to the significance of wetland impacts and the lack of uplands within a practical

distance from the bottom-hole location(s), upland and wetland alternatives were rejected and were not practicable. Alternative bay locations were also considered. Due to the configuration of subsurface targets, locations south of the Gulf Intracoastal Waterway (GIWW) were not feasible. The applicant attempted to obtain permission from other leaseholders so that drilling might occur outside of the proposed area. This permission was denied. Dredging access options were also considered. The proposed channel lengths, widths, and depths are considered the minimum necessary to accomplish drilling rig access. The applicant is evaluating potential means of reducing the required draft of the access channel and, if successful, the dredge volume and dredge material placement area would be reduced in size.

The applicant considered several dredge material placement options. The applicant's Preferred Option is placement of the dredged material at the existing Corps of Engineers confined disposal facility #58A. If a suitable land placement site is not available, the applicant has identified two options for beneficially using the dredged material. Up to 150,000 cubic yards of sand, silt, and clay may be discharged into one or both of these confined Beneficial Use (B.U.) sites. If all wells were constructed, between 22.0 to 40.0 acres of bay bottom could be filled with dredge material during the creation of these sites and their associated wetland habitat. Of that, 80,000 cubic yards would be discharged during initial dredging and 70,000 cubic yards would be discharged during subsequent dredging and maintenance dredging. Every effort will be made to avoid wetland impacts.

The preferred B.U. Option is the Option 1 site (28.0-acre), which involves placement of all material in a confined habitat creation site at the mouth of Greens Lake. If use of this site is not practicable, the applicant will place all dredge material into the B.U. Option 2 site (22.0-acre). The B.U. Option 2 site would result in the creation of habitat south of the GIWW near Greens Lake. If the applicant uses the aforementioned land placement, or the B.U. Option 2 site, the applicant will construct the preferred access channel and construct a breakwater at the mouth of Green's Lake. This breakwater will mitigate salinity intrusion due to past erosion at the mouth of Green's Lake and will also mitigate possible salinity intrusion effects due to dredging of the access channel. The breakwater will be completed within six months of completion of dredging. If the B.U. Option 1 site is used, the breakwater would not be built unless the southeastern levee of the B.U. Option 1 site is not armored.

All of the material placement options would offer benefits to the Green's Lake system: (a) protection of shallow bottom from wave action and reduced shoaling of the GIWW; (b) protection of wetlands from wave action; (c) creation of at least 1200 linear feet of hard structure or reef habitat near the mouth of Green's Lake; and (d) the creation of up to 2.1 acre of shallow reef in mud-oyster bottom near the drilling basin (if oysters excavated from the channel and basin are not used for construction of the breakwater near the mouth of Green's Lake).

Additionally, if Options 1 or 2 are used for material placement, between 22.0 and 28.0 acre of wetland, fisheries and bird habitat would be created. It is anticipated that the created habitat would be comprised of approximately 20% bird nesting, roosting and non-tidal pond habitat, 15% high marsh, 10% intermediate marsh, 55% low marsh and tidal ponds and channels. Habitat ratios may vary depending upon soils, dredging methods and other factors.

If a B.U. site is used for placement of the dredged material, planting, replanting, and monitoring will be performed generally according to standard Texas General Land Office (GLO) guidelines as follows: a) Agencies will be notified at least two weeks prior to initiation of planting. b) Following sediment conditioning of at least 90 days, the area

will be planted on 3-foot centers. A planting unit will consist of a sprig of each of the various species. Each planting unit will be securely embedded in the planting surface. c) Plant material will be borrowed from state, federal, or private wetlands. d) No more than one 6" plug of source material per one square yard shall be obtained from the designated borrow areas. Incidental damage to borrow areas shall be strictly avoided. e) Complete photographic coverage of planting area taken immediately prior to and following transplant activities shall be submitted to the Corps of Engineers (CE), GLO, and resource agencies. f) CE, GLO, and resource agencies shall be notified in writing upon completion of the planting effort. g) A monitoring effort will be conducted within 60 days following the initial planting. If 50% survival of the transplant material is not achieved, a 2nd planting effort will be made either within the next 30 days during the first non-summer period following the 60-day monitoring effort. A written report detailing the results of the effort shall be submitted within 30 days following the replanting. h) If at least 70% coverage is not achieved within 2 years following planting, another planting effort will be made within the next 30 days or during the first non-summer period following the two-year monitoring effort. A written report detailing the results of this effort shall be submitted within 30 days following the survey. i) A 3-year monitoring study will be conducted following the planting. The percent vegetative coverage will be monitored within the mitigation area. The monitoring study will note any unusual erosion and sedimentation variations. Rates of erosion and other observations will also be made. Subsequent progress reports containing the referenced information shall be submitted to the CE, GLO, and resource agencies at 6-month, 1-year, 2-year, and 3-year intervals following planting.

Within the B.U. sites, areas between elevations +1.8 ft MLT and +2.5 ft MLT (low marsh) will be planted with smooth cordgrass (*Spartina alterniflora*). Areas between elevations +2.5 ft MLT and +3.0 ft MLT (intermediate marsh) will be planted with saltgrass (*Distichlis spicata*), sea ox-eye daisy (*Borrichia frutescens*), saltwort (*Salicornia virginica*), and glasswort (*Batis maritima*), and other associated species. Areas above elevation +3.0 ft MLT (high marsh) will be planted with marsh hay cordgrass (*Spartina patens*), Gulf cordgrass (*Spartina spartinae*), sea ox-eye daisy and associated species. Areas below +1.8 ft MLT will remain unplanted to serve as open water and circulation routes. If B.U. Option 1 is used, an unplanted shallow, perched pond area would be constructed for bird utilization. Planting of the unarmored levees would begin within 30 days of completion of construction and would be completed within 30 days of start of planting. Planting of the dredged material would begin within 30 days of the consolidation of the material, but no longer than 6 months after completion of construction. Planting of the consolidated dredge material would be completed within 60 days of start of planting.

Circulation channels will be constructed through the levees of B.U. Options 1 and 2 to allow tidal exchange. Other circulation channels will be constructed as deemed appropriate. The channels will be a minimum of 10-foot bottom width and will be constructed after the dredged material has sufficiently consolidated. Culverts drop gate structures or other water control devices may be placed in the levees to facilitate dewatering of the site. Such devices, including the discharge structures, will be removed after consolidation of the dredged material.

The proposed access channel and Well No. 1 basin dredging will impact up to 2.5 acre of mud-oyster bay bottom. During the construction bidding process, cost issues will factor in whether the excavated shell and oysters (approximately 4,000 cu yds) will either be used to create up to 1.0 acre of reef near the drilling basin or to create a 1.77 acre reef breakwater near the mouth of Green's Lake. Approximately 77,105 square feet of mud bottom would be filled to construct the breakwater.

If Well No. 1 is commercially productive, the basin for Well No. 1 will be expanded to accommodate additional wells. Any substantial accumulated material in the access channel will be removed either mechanically and hauled to an approved land site, or it will be hydraulically dredged and pumped into 18.0 acre of the B.U. Option 2 site. Up to 2.8 acre of mud-oyster bay bottom would be impacted by new dredging associated with the expansion. Up to 4,600 cubic yards of shell-oysters removed from the expanded basins for Well Nos. 2-5 will be used to create up to 1.1 acre of reefs near the basin area.

The created reefs will be monitored 60 days, 6 months, 1, 2, and 3 years after completion of the construction of the reef. Monitoring will estimate the surface area of exposed shell, density, and size distribution of live oysters, typical elevations of the reef base and crest, and any accumulation of sediment. Monitoring reports will be submitted to the CE, GLO and resource agencies within 30 days following the surveys. Boom-type silt curtains will be placed to protect reefs within 500 feet of the proposed construction and access channel.

The applicant will also install approximately 980 feet or 15,680 square feet of articulated mat or breakwater along the shoreline west of the proposed access channel. The purpose of this construction is to control erosion due to vessel traffic and due to natural forces.

CCC Project No.: 05-0097-F1; Type of Application: U.S.A.C.E. permit application #23572 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Frank Markantonis; Location: The project is located in wetlands southwest of the intersection of Teichman Road and 91st Street, in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Galveston, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 318252; Northing: 3240351. Project Description: The applicant proposes to fill 0.08 acre of tidally influenced wetlands for the construction of a residential homesite. The proposed fill includes raising the elevation of the south end of the lot and the backfill necessary to construct approximately 80 feet of bulkhead. The applicant also seeks authorization to rebuild a 150-foot-long pier, terminating with an L-head and boathouse. To offset the proposed fill of smooth cordgrass (*Spartina alterniflora*) wetland the applicant proposes to construct a 170-foot-long riprap breakwater, raise the elevation of the area behind the breakwater, and plant the area with smooth cordgrass. The area to be filled and planted for mitigation is 0.09 acre. CCC Project No.: 05-0080-F1; Type of Application: U.S.A.C.E. permit application #23520(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: TH Investments, Inc.; Location: The project is located within the San Jacinto River, along the eastern bank of the Lost Lake Dredge Material Placement Area (LLDMPA), in Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Highlands, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 299043; Northing: 3295572. Project Description: The applicant proposes to install 10 mooring buoys along the eastern shoreline of the LLDMPA. The buoys will be placed 200 feet apart and 50 feet from the shoreline of the LLDMPA. The mooring buoys will be used for a barge fleeting area. The applicant proposes this project is an extension of the previously approved barge fleeting area located to the north of the proposed site. CCC Project No.: 05-0078-F1; Type of Application: U.S.A.C.E. permit application #22941(02) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: TH Investments, Inc.; Location: The project is located within the San Jacinto River, south of Hog Island, east of the navigation channel and west of the Lynchburg Reservoir, in Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Highlands, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 299313; Northing: 3295630. Project Description: The applicant proposes to install structures to facilitate the fleeting of barges. The structures will include 2 spud barges, each 195-foot-long by 35-foot-wide, and 11 mooring buoys. The mooring buoys will be placed 200 feet apart. The average depth of the project site varies between -9.5 to -15 feet. The applicant intends to fleet barges between the proposed structures and the navigation aids. CCC Project No.: 05-0085-F1; Type of Application: U.S.A.C.E. permit application #23601 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Ray A. Caballero; Location: The project is located along Offatts Bayou, at 6310 Heards Lane, in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Galveston, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 321737; Northing: 3240092. Project Description: The applicant proposes to retain two existing piers that were built outside the scope of Department of Army Permit 22698. The first existing pier (Pier 3 on attached plans) to be retained is 93 feet long with a 4-foot-wide walkway and has a 51.6-foot-wide by 3.6-foot-long T-head. There are also 6 finger piers that extend from the main pier that measure from 15 to 20 feet in length with 2-foot-wide walkways. The second existing pier (Pier 4 on attached plans) to be retained is 89.6 feet long with a 4 foot wide walkway and has a 52-foot-wide by 5-foot-long T-head. There are also 6 finger piers that extend from the main pier that measure from 23.6 to 24 feet in length with 2-foot-wide walkways.

The applicant also proposes to amend the original permit plans to retain existing pilings associated with two new proposed piers (Piers 1 and 2 on attached plans). The two newly proposed piers will be 80-foot-long with a 2-foot-wide walkway and each will have a 30-foot-long by 4-foot-wide L-head. A 48-foot-long by 13.6-foot-wide deck will be built between the proposed piers.

CCC Project No.: 05-0096-F1; Type of Application: U.S.A.C.E. permit application #22698(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Gwen Spriggs, Council Administrative Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or gwen.spriggs@glo.state.tx.us. Comments should be sent to Ms. Spriggs at the above address or by fax at 512/475-0680.

TRD-200500242

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council

Filed: January 19, 2005

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in 303.003, 303.009, and 304.003, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 01/24/05 -- 01/30/05 is 18% for Consumer ¹/Agricultural/Commercial ²/credit thru \$250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 01/24/05 -- 01/30/05 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 02/01/05 -- 02/28/05 is 5.25% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 02/01/05 -- 02/28/05 is 5.25% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200500248

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: January 19, 2005

Credit Union Department

Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Scott & White Employees Credit Union, Temple, Texas to expand its field of membership. The proposal would permit persons who live, work, attend school or worship in and businesses located within Bell County, Texas, to be eligible for membership in the credit union.

An application was received from Houston Postal Credit Union, Houston, Texas to expand its field of membership. The proposal would permit persons who live, work, attend school, or worship in and businesses located within 10 miles of each of the following branch offices: 6055 South Loop East, Houston, Texas 77087; 401 Franklin Avenue, Houston, Texas 77002; 4600 Aldine Bender Road, Houston, Texas 77032; 9998 Almeda-Genoa Road, Houston, Texas 77075; and within 5 miles of the ATM located at 315 Addicks Howell Road, Houston, Texas 77079, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.tcred.state.tx.us/applications.html>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200500246

Harold E. Feeney

Commissioner

Credit Union Department

Filed: January 19, 2005

Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership--Approved

Winkler County Credit Union, Kermit, Texas (Conditional)--See *Texas Register* issue dated May 28, 2004 (29 TexReg 5432).

Lone Star Credit Union, Dallas, Texas--See *Texas Register* issue dated September 24, 2004 (29 TexReg 9217).

Star of Texas Credit Union, Austin, Texas--See *Texas Register* issue dated September 24, 2004 (29 TexReg 9217).

Application to Expand Field of Membership--Denied

MemberSource Credit Union, Houston, Texas (#2)--See *Texas Register* issue dated October 29, 2004 (29 TexReg 10153).

Application to Amend Articles of Incorporation--Approved

GPS Community Credit Union, Galena Park, Texas--See *Texas Register* issue dated November 26, 2004 (29 TexReg 11175).

Application for a Merger or Consolidation--Approved

PriorityOne Credit Union (Dallas) and Resource One Credit Union (Dallas)--See *Texas Register* issue dated July 30, 2004 (29 TexReg 7520).

TRD-200500245

Harold E. Feeney

Commissioner

Credit Union Department

Filed: January 19, 2005

Texas Commission on Environmental Quality

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 28, 2005**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued

in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 28, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Ambica Corporation dba Pecan Food Mart; DOCKET NUMBER: 2003-0836-PST-E; TCEQ ID NUMBERS: 27721 and RN101382018; LOCATION: 2101 South First Street, Austin, Travis County, Texas; TYPE OF FACILITY: gas station; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum underground storage tanks (USTs); PENALTY: \$2,850; STAFF ATTORNEY: Christie Walters, Litigation Division, MC 175, (512) 239-1357; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(2) COMPANY: Barker Business, Inc. dba Speedy Mart; DOCKET NUMBER: 2003-1030-PST-E; TCEQ ID NUMBER: 35281; LOCATION: 2414 West Parkwood, Friendswood, Galveston County, Texas; TYPE OF FACILITY: gas station; RULES VIOLATED: 30 TAC §115.246(4) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain documentation of Stage II vapor recovery training for each employee; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to conduct a successful annual pressure decay test on the Stage II vapor recovery system; PENALTY: \$6,900; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Haafiz & Aman Inc.; DOCKET NUMBER: 2003-1195-PST-E; TCEQ ID NUMBERS: 630 and RN101794758; LOCATION: 3110 16th Street, Orange, Orange County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor for releases from the USTs at least once per month, not to exceed 35 days; PENALTY: \$2,000; STAFF ATTORNEY: Wendy Cooper, Litigation Division, MC R-4, (817) 588-5867; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Helotes Water Company; DOCKET NUMBER: 2002-0197-PWS-E; TCEQ ID NUMBERS: 101274033 and RN101274033; LOCATION: on Dent Lane 1/4 mile southwest of the intersection of Dent Lane and State Highway 16, near Helotes, Bexar County, Texas; TYPE OF FACILITY: public water utility; RULES VIOLATED: 30 TAC §291.101(a) and TWC, §13.242(a), by failing to obtain from the commission a certificate of convenience and necessity prior to rendering retail water service; and 30 TAC §291.21 and TWC, §13.190, by failing to obtain an approved tariff where obtaining compensation for providing water service; PENALTY: \$1,040; STAFF ATTORNEY:

Christie Walters, Litigation Division, MC 175, (512) 239-1357; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Hermilio Gracia and Alma Gracia; DOCKET NUMBER: 2003-0493-MSW-E; TCEQ ID NUMBERS: 455150052 and RN102821550; LOCATION: 1/4 mile west of Highway 77 on Spur 112, Lyford, Willacy County, Texas; TYPE OF FACILITY: unauthorized municipal solid waste disposal; RULES VIOLATED: 30 TAC §330.5(a), by failing to prohibit the disposal of municipal solid waste at an unauthorized site; PENALTY: \$7,875; STAFF ATTORNEY: Lindsay Andrus, Litigation Division, MC 175, (512) 239-4761; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(6) COMPANY: Mario Solis dba 1732 Used Auto Parts; DOCKET NUMBER: 2003-1239-MLM-E; TCEQ ID NUMBERS: R15SW0011 and RN103023677; LOCATION: approximately 1/2 mile east of the intersection of Farm-to-Market Road (FM) 1421 and FM 1732, on the north side of FM 1732, Olmito, Cameron County, Texas; TYPE OF FACILITY: automobile salvage yard; RULES VIOLATED: 30 TAC §281.25(a)(4) and TWC, §26.121(a), by failing to obtain authorization prior to discharging storm water associated with an industrial activity; and 30 TAC §330.5(c) and §328.13(a), by failing to prevent the disposal of municipal solid waste, including waste tires, construction debris, and lead-acid battery; PENALTY: \$12,600; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: Rabnawaz Sattar dba Stop N Get; DOCKET NUMBER: 2003-1157-PST-E; TCEQ ID NUMBERS: 29667 and RN102283330; LOCATION: 2731 East Cesar Chavez, Austin, Travis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(2)(C) and TWC, §26.3475(d), by failing to check the rectifier impressed current cathodic protection system at least once every 60 days; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(a), by failing to monitor USTs for releases at a frequency of at least once every month; 30 TAC §334.8(c)(4)(B) and TWC, §26.346(a), by failing to submit an updated UST registration and self-certification form to the TCEQ with current financial assurance information; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to ensure that a valid TCEQ delivery certificate was posted before accepting delivery into the USTs; and 30 TAC §334.10(b), by failing to provide records of fuel deliveries; PENALTY: \$14,490; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(8) COMPANY: Shepherd Southwest Corporation; DOCKET NUMBER: 2004-0079-PST-E; TCEQ ID NUMBER: 940 and RN102009396; LOCATION: 306 FM 359, Brookshire, Waller County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii) and TWC, §26.3475, by failing to provide adequate release detection by not conducting reconciliation of inventory control records on a monthly basis in conjunction with automatic tank gauging; PENALTY: \$15,300; STAFF ATTORNEY: Christie Walters, Litigation Division, MC 175, (512) 239-1357; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

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**Notice of Opportunity to Comment on Settlement Agreements
of Administrative Enforcement Actions**

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 28, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 28, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: Anwar Dayani dba Sid's Food Store; DOCKET NUMBER: 2003-1140-PST-E; TCEQ ID NUMBERS: 0015149 and RN101562643; LOCATION: 13317 Kleberg Road, Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct an annual pressure decay test within the preceding 12-month period; and 30 TAC §115.242(3)(A) and (G) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition; PENALTY: \$600; STAFF ATTORNEY: Lindsay Andrus, Litigation Division, MC 175, (512) 239-4761; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Beaumont Town & Country Plaza, Inc.; DOCKET NUMBER: 2004-0527-PST-E; TCEQ ID NUMBER: 74817 and RN102866191; LOCATION: 13159 Farm-to-Market Road 365, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475, by failing to reconcile inventory control records on a monthly basis which were sufficiently accurate to detect a release which equaled or exceeded the sum of 1% of the flow through plus 130 gallons; 30 TAC §334.50(b)(1)(A)

and TWC, §26.3475, by failing to monitor its underground storage tank (UST) systems for releases at least once per month; 30 TAC §334.8(c)(5)(C), by failing to physically label all tank fill pipes according to the registration and self-certification form; and 30 TAC §37.835(b), by failing to provide a properly worded insurance policy for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$8,700; STAFF ATTORNEY: Barbara Klein, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: CMH Parks, Inc. dba Raintree Acres Mobile Home Park; DOCKET NUMBER: 2004-0374-MWD-E; TCEQ ID NUMBERS: 12849001 and RN101613321; LOCATION: 1938 Garden Road 209, Pearland, Brazoria County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number 12849001, by failing to comply with permit limitations; 30 TAC §319.11(c), by failing to maintain the primary flow measurement device; and 30 TAC §317.7(i) and TPDES Permit Number 12849001, Monitoring and Reporting Requirements Number 5, by failing to provide documentation of calibration of the backflow prevention device on the incoming potable water line; PENALTY: \$33,000; STAFF ATTORNEY: Barbara Klein, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Effluent Recycling, Inc.; DOCKET NUMBER: 2003-1533-MLM-E; TCEQ ID NUMBERS: C87376, A85740, and RN102755089; LOCATION: 1010 Benjamin Street, Fort Worth, Tarrant County, and 1117 South Commerce, Ranger, Eastland County, Texas; TYPE OF FACILITY: hazardous waste storage and used oil handling; RULES VIOLATED: 30 TAC §335.112(a)(9) and 40 Code of Federal Regulations (CFR) §265.192, by failing to provide a written assessment that was reviewed and certified by an independent, qualified registered professional engineer; 30 TAC §335.2(a) and §335.43(a), and 40 CFR §270.1(c), by failing to obtain a permit to store hazardous waste; 30 TAC §335.112(a)(9) and 40 CFR §265.193, by failing to install and maintain secondary containment which is designed to prevent any migration of waste or accumulated liquids out of the tank system into the soil, groundwater, surface water, at any time during the use of the tank system; 30 TAC §335.112(a)(9) and 40 CFR §265.195, by failing to provide documentation for inspections conducted on the tank system; 30 TAC §335.112(a)(8) and 40 CFR §265.176, by failing to maintain containers holding ignitable waste at least 50 feet from the property line; 30 TAC §335.112(a)(8) and 40 CFR §265.173, by failing to close hazardous waste containers; 30 TAC §337.3(b) and §327.5(c), by failing to make notifications of reportable discharges or spills into the environment within 24 hours; 30 TAC §335.62 and 40 CFR §262.11, by failing to conduct a complete hazardous waste determination for the ground storage tank bottoms; 30 TAC §335.4(1), by failing to prevent the disposal of industrial solid waste in such a manner to cause the discharge or imminent threat of discharge into or adjacent to the waters in the state without specified authorization; 30 TAC §335.5 and §335.6(a), by failing to deed record and to comply with written or electronic notification requirements for the disposal of industrial solid waste; 30 TAC §324.4, 40 CFR §279.12(a), and TWC, §26.121, by failing to manage used oil in such a manner as to not endanger the welfare of the environment; 30 TAC §324.6 and 40 CFR §279.22, by failing to maintain six 12,000-gallon used oil tanks in good condition with no visible leaks, and labeled or marked clearly with the words "used oil"; 30 TAC §324.1 and §324.12(3), and 40 CFR §§279.44(a), 279.53(a),

and 279.57, by failing to provide documentation to meet the rebuttable presumption for used oil as a transporter and processor/re-refiner and failing to meet operating record requirements for not having a facility analysis plan; and 30 TAC §324.12 and 40 CFR §279.52, by failing to maintain and operate the facility to minimize the possibility of a fire or explosion; PENALTY: \$1,340; STAFF ATTORNEY: Wendy Cooper, Litigation Division, MC R-4, (817) 588-5867; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800 and Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: Electro-Coatings of Texas, Inc.; DOCKET NUMBER: 2001-0588-IHW-E; TCEQ ID NUMBER: 30783; LOCATION: 216 Baywood Street, Houston, Harris County, Texas; TYPE OF FACILITY: metal finishing; RULES VIOLATED: 30 TAC §335.69(a)(1)(B) and §335.112(a)(9), and 40 CFR §262.34(a)(1)(ii) and §265.191(a), by failing to obtain a certified written integrity assessment for an existing "less than 90 days" hazardous waste tank; 30 TAC §335.69(a)(1)(B) and §335.112(a)(9), and 40 CFR §262.34(a)(1)(ii) and §265.193(a)(3), by failing to provide adequate secondary containment for an existing "less than 90 days" hazardous waste tank; 30 TAC §335.69(a)(1)(B) and §335.112(a)(9), and 40 CFR §262.34(a)(1)(ii), 265.192, and 265.193(a)(1), by failing to provide adequate secondary containment for a "less than 90 days" 2,100-gallon hazardous waste tank; 30 TAC §335.69(a)(1)(B) and §335.112(a)(9), and 40 CFR §§262.34(a)(1)(ii), 265.192, and 265.193(a), by failing to provide adequate secondary containment for two new "less than 90 days" chrome scrubber washdown tanks and failing to obtain a certified written integrity assessment of the tank system associated with each of these tanks; 30 TAC §335.69(a)(2) and (3), and 40 CFR §262.34(a)(2) and (3), by failing to clearly mark or label four hazardous waste storage tanks with the words "hazardous waste" and failing to mark or label four hazardous waste containers with the accumulation start date and with the words "hazardous waste"; 30 TAC §335.69(a)(91)(A) and §335.112(a)(8), and 40 CFR §262.34(a)(1)(I) and §265.173(a), by failing to keep three containers of hazardous waste closed; 30 TAC §335.69(a)(4) and §335.112(a)(3), and 40 CFR §262.34(a)(4) and §265.53(b), by failing to provide a copy of the contingency plan to the local fire department; 30 TAC §335.503(a)(4), by failing to complete a solid waste determination for a waste stream generated at the facility; 30 TAC §335.6(c), by failing to update the notice of registration concerning waste streams and solid waste management units; and 30 TAC §335.8(c)(1), by failing to notify the executive director and the TCEQ Houston regional office in writing prior to closure activities for three waste management units; PENALTY: \$71,340; STAFF ATTORNEY: Lisa Lemanczyk, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Houston Business Investments, Inc.; DOCKET NUMBER: 2003-0886-PST-E; TCEQ ID NUMBERS: 0033621 and RN101431682; LOCATION: 4109 Manvel Road #1, Pearland, Brazoria County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum UST; PENALTY: \$3,200; STAFF ATTORNEY: Wendy Cooper, Litigation Division, MC R-4, (817) 588-5867; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Ivan Allen dba Keene Sanitation; DOCKET NUMBER: 2003-0299-MSW-E; TCEQ ID NUMBER: 455040113; LOCATION: 215 East Oakdale Street, Keene, Johnson County, Texas; TYPE

OF FACILITY: unauthorized municipal solid waste transfer and storage; RULES VIOLATED: 30 TAC §330.4(a), by failing to obtain a permit or other commission authorization to operate a Type V municipal solid waste transfer station; and 30 TAC §330.32(b), by failing to ensure that all collected solid waste is unloaded only at facilities authorized to accept the type of waste being transported; PENALTY: \$7,350; STAFF ATTORNEY: Ashley Kever, Litigation Division, MC 175, (512) 239-2987; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Lajitas Management, LLC dba Lajitas Utility Co., Inc.; DOCKET NUMBER: 2001-0901-MLM-E; TCEQ ID NUMBERS: 0220018, 14282-001, 12167-001, and RN102079365; LOCATION: on an unnamed road 1/4 mile south of Highway 170 in Lajitas and approximately 1,600 feet south of Ranch-to-Market Road 170 and 1,800 feet east of the Rio Grande River, Brewster County, Texas; TYPE OF FACILITY: public water supply system and wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(2), TWC, §26.121, and TPDES Permit Number 12167-001, Permit Condition 4(c), by failing to renew TPDES Permit Number 12167-001 prior to the expiration date; 30 TAC §305.125(1) and §319.5(b), and TPDES Permit Number 14282-001, Effluent Limitations and Monitoring Requirements Number 2, by failing to maintain a chlorine residual of at least 1.0 milligrams per liter (mg/L) at the wastewater plant and failing to monitor chlorine residual of the effluent five times per week; 30 TAC §305.125(1) and TPDES Permit Number 14282-001, Operational Requirement Number 5, and Monitoring and Reporting Requirement Number 5, by failing to provide the 90 degree v-notch flow measuring device with a staff gauge and by failing to calibrate the ultrasonic totalizer measuring device on an annual basis; 30 TAC §319.7(a) and (c), by failing to maintain pH and dissolved oxygen calibration records; 30 TAC §319.7(a) and (d), and TPDES Permit Number 14282-001, Operational Requirement Number 1, by failing to submit monthly discharge monitoring reports; 30 TAC §305.62(a) and §305.66(a)(1), and TPDES Permit Number 14282-001, Permit Condition Number 4.a, by failing to amend the existing water quality permit to authorize the effluent to be discharged to man-made ponds, commingled with raw well water and applied to the Lajitas Golf Course; 30 TAC §290.46(d)(2)(A), by failing to maintain a residual disinfectant concentration of at least 0.2 mg/L free chlorine throughout the distribution system for the water supply; 30 TAC §290.118(a) and (b), and THSC, §341.031(a) and §341.031(c), by failing to provide public drinking water that meets the secondary constituent levels, without written approval from the executive director; 30 TAC §290.44(h)(4), by failing to have the backflow prevention assembly tested at least annually by a recognized backflow prevention assembly tester; 30 TAC §290.46(1), by failing to flush all dead end mains at monthly intervals or more frequently as required; 30 TAC §290.42(d)(14), by failing to provide sampling taps for individual filter effluent and clear well discharges; 30 TAC §290.42(d)(11)(E)(i), by failing to equip each filter with a sampling tap to individually monitor the effluent turbidity; 30 TAC §290.42(d)(11)(E)(v), by failing to equip each filter with an operational device to indicate loss of head through the filter; 30 TAC §290.110(c)(5)(C), by failing to properly monitor the residual disinfectant concentration in the distribution system at bacteriological sampling sites; 30 TAC §290.46(m) and (t), by failing to initiate maintenance and housekeeping practices to ensure the reliability and general appearance of the system's facilities and equipment; 30 TAC §290.46(s)(2)(B), by failing to calibrate the on-line and bench top turbidimeters; 30 TAC §290.42(e)(4)(C), by failing to provide adequate ventilation for all enclosures in which chlorine gas was being stored or fed; 30 TAC §290.121 and §290.110(f)(1), by failing to maintain an up-to-date chemical and microbiological monitoring plan and to conduct chlorine residual tests at bacteriological sampling

sites designated in the monitoring plan; 30 TAC §290.44(h)(1)(A) and §290.47(i), Appendix I, by failing to establish a cross-connection control program to provide protection against contamination and health hazards; 30 TAC §290.45(a)(2) and §290.46(r), by failing to design, maintain, and operate the water supply to provide a minimum pressure of 35 pounds per square inch throughout the distribution system under normal operating conditions; 30 TAC §290.41(c)(3)(N), by failing to provide each well with properly operating flow meters to measure production yields and provide for the accumulation of water production data; 30 TAC §290.43(c)(2) and (3), by failing to have all roof openings and overflow pipes properly maintained; and 30 TAC §290.42(i), by failing to obtain a permit from the commission for discharging wastes from the water treatment process; PENALTY: \$12,312; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(9) COMPANY: Oak Bend Property Owners dba Oak Bend Homeowners Water Supply; DOCKET NUMBER: 2004-0448-PWS-E; TCEQ ID NUMBERS: 0610167 and RN101247930; LOCATION: 200 Farris Road, Denton, Denton County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(n)(3), by failing to provide well completion data; 30 TAC §290.41(c)(3)(B), by failing to provide a well with a casing 18 inches above the elevation of the finished floor of the pump house or natural ground surface with a minimum of one inch above the sealing block or pump motor foundation block; 30 TAC §290.43(c)(4), by failing to equip each ground storage tank (GST) with a water level indicator located at the tank site; 30 TAC §290.41(c)(3)(N), by failing to install an operational flow meter on the well pump discharge line; 30 TAC §290.42(1), by failing to provide a plant operations manual for operator review and reference; 30 TAC §290.46(m)(1)(A), by failing to inspect the GST annually; and 30 TAC §290.46(m)(1)(B), by failing to inspect the pressure tank annually; PENALTY: \$400; STAFF ATTORNEY: Barbara Klein, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Robert Perry dba American Camp and Mobile Home Park; DOCKET NUMBER: 2003-0213-MWD-E; TCEQ ID NUMBER: RN102676715; LOCATION: 10348 West Highway 90, Del Rio, Val Verde County, Texas; TYPE OF FACILITY: recreational vehicle park campground and mobile home subdivision; RULES VIOLATED: TWC, §26.121(a)(1), by failing to obtain a permit prior to discharging waste into, or adjacent to, waters in the state; PENALTY: \$4,025; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Laredo Regional Office, 1403 Seymour, Suite 2, Laredo, Texas 78040-8752, (956) 791-6716.

(11) COMPANY: Sahers, Inc. dba Save A Step Mart 5; DOCKET NUMBER: 2003-0847-PST-E; TCEQ ID NUMBERS: 33614 and RN101894913; LOCATION: 21950 Meadow Hill Drive, Spring, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental release arising from the operation of the USTs; PENALTY: \$2,460; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200500222

Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 18, 2005



Notice of Public Hearing by the Texas Commission on Environmental Quality on Proposed Revisions to 30 TAC Chapters 39 and 336

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive comments concerning revisions to 30 TAC Chapter 39, Public Notice, §§39.703, 39.707, and 39.709, and 30 TAC Chapter 336, Radioactive Substance Rules, §§336.1, 336.105, 336.211, 336.501, 336.601, and new Subchapter K, §§336.1001, 336.1003, 336.1005, 336.1007, 336.1009, 336.1011, 336.1013, 336.1015, 336.1017, and 336.1019, under the requirements of Texas Health and Safety Code, §382.017 and Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would allow the licensing of commercial disposal of naturally occurring radioactive material (NORM) waste streams from public water systems. The proposed license program would only apply to NORM waste disposal into Class I injection wells. The proposed rulemaking would also add new application and annual fees for commercial NORM disposal licenses and amend existing fees for licenses authorizing alternate methods of radioactive material disposal.

A public hearing on this proposal will be held in Austin on February 24, 2005 at 2:00 p.m. in Building F, Room 2210, at the commission's central office, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

Comments may be submitted to Joyce Spencer, Texas Commission on Environmental Quality, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Project Number 2004-030-336-WS. Comments must be received by 5:00 p.m., February 28, 2005. For further information, please contact Debi Dyer, Policy and Regulations Division, at (512) 239-3972.

TRD-200500194
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 11, 2005



Notice of Water Quality Applications

The following notices were issued during the period of January 10, 2005 through January 18, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests

for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, **WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.**

BASTROP ENERGY PARTNERS, L.P. which operates the Bastrop Energy Center, a natural gas fueled electric generation station, has applied for a renewal of TPDES Permit No. WQ0004211000, which authorizes the discharge of cooling tower blowdown and low volume wastewater at a daily average flow not to exceed 2,000,000 gallons per day via Outfall 001. The facility is located on Texas State Highway 71, approximately two miles south/southwest of the intersection of Texas State Highway 71 and County Road 214, Bastrop County, Texas.

FRUITVALE HOUSING AUTHORITY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014545001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 4,300 gallons per day. The facility is located approximately 2,500 feet south-southeast of the intersection of State Highway 80 and Farm-to-Market Road 1,910 and approximately 4,000 feet southwest of the intersection of State Highway 80 and Farm-to-Market Road 1,110 in Van Zandt County, Texas.

MPR INVESTMENTS, LLC has applied for a major amendment to TPDES Permit No. WQ0013376001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 9,500 gallons per day to a daily average flow not to exceed 19,500 gallons per day. The facility is located on Bethesda Road approximately 1/4 mile east of the Bethesda Road overpass on Interstate Highway 35, approximately 5 miles southeast of the City of Burleson in Johnson County, Texas.

THE CITY OF PLAINS has applied for a renewal of Permit No. 10114-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 160,000 gallons per day via surface irrigation of 77 acres. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1 mile east of State Highway 214 and 1.5 miles north of U.S. Highway 380 in Yoakum County, Texas.

POLONIA WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 14033-001, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 6,000 gallons per day. The facility is located at the northwest side of Farm-to-Market Road 1854 at its junction with Caldwell County Road 189, 0.25 mile southeast of the community of Dale and 1 mile northwest of the intersection of Farm-to-Market Road 1854 and State Highway 20 in Caldwell County, Texas.

POLONIA WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 14033-002, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 3,000 gallons per day. The facility is located 4.35 miles south of the junction of Farm-to-Market Road 1322 and U.S. Highway 183 on the west side of Farm-to-Market Road 1322 across from Caldwell County Road 197, Caldwell County, Texas.

DR. ALBERT PRESCOTT RIBISI has applied for a renewal of TPDES Permit No. 12284-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located approximately 300 feet northwest of Cain Road on Old Wellborn road, approximately 3,500 feet south-southeast of the intersection of Farm-to-Market Road 2818 (West-By-Pass) and Farm-to-Market Road 2154 in Brazos County, Texas.

CITY OF SEADRIFT has applied for a renewal of TPDES Permit No. 10822-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located south of and adjacent to State Highway 185, between Orange and Olive Streets in the City of Seadrift in Calhoun County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of Permit No. 11951-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 8,000 gallons per day via irrigation of 3.25 acres of non public access grassland. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 0.5 mile from the park entrance, approximately 4 miles north of the intersection of Farm-to-Market Road 337 and State Highway 187 in Bandera and Real Counties, Texas.

VALLEY BY PRODUCTS, INC. which operates a meat rendering facility has applied for a renewal of Permit No. WQ0001243000, which authorizes the disposal of process wastewater, boiler blowdown, and clean-up water with up to 1% caustic soda routed to a lined evaporation pond with a surface area of 0.45 acres and a storage capacity of 0.90 acre-feet at a daily average flow not to exceed 1,000 gallons. This permit will not authorize a discharge of pollutants into water in the State. The facility and evaporation pond are located at 7740 Kiely Road, approximately 4,000 feet east-southeast of the intersection of State Highway 20 and Hemley Road, near the termination of Kiely Road, El Paso County, Texas.

TOWN OF WOODSBORO has applied for a renewal of TPDES Permit No. 10156-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located approximately 1,500 feet south of the intersection of Farm-to-Market Road 1360 and Churchhill Road, and approximately 3 miles southeast of the intersection of U.S. Highway 77 and Farm-to-Market Road 2441, southeast of the City of Woodsboro in Refugio County, Texas.

TRD-200500244

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 19, 2005



Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 28, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 28, 2005**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Andrew Enterprise, Inc. dba Audrey Chevron; DOCKET NUMBER: 2004-1382-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Registration Number 73201, Regulated Entity Reference Number (RN) 101435238; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c) and §334.50(b)(1)(A), (2)(A)(i)(III), and (d)(1)(B)(ii), and the Code, §26.3475(a), by failing to reconcile the inventory control records and by failing to monitor underground storage tanks (USTs) for releases and conducting the annual tightness test; PENALTY: \$6,120; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Azteca Milling, L.P. dba Dawn Corn Milling Facility; DOCKET NUMBER: 2004-1642-AIR-E; IDENTIFIER: Air Account Number DD0067Q, RN102166758; LOCATION: near Dawn, Deaf Smith County, Texas; TYPE OF FACILITY: corn mill; RULE VIOLATED: 30 TAC §122.121 and §122.130(b)(1) and THSC, §382.054, by failing to submit an abbreviated Title V federal operating permit application and continuing to operate; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: Eugenia Balaban and Mikhailina Balaban; DOCKET NUMBER: 2004-1522-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13749001, RN102340403; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13749001, and the Code, §26.121(a), by failing to comply with the ammonia nitrogen daily average concentration limit; PENALTY: \$776; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Balch Oil Company Inc. dba All American Chevrolet; DOCKET NUMBER: 2004-1602-PST-E; IDENTIFIER: PST Facility Identification Number 65280, RN103065835; LOCATION: Slaton, Lubbock County, Texas; TYPE OF FACILITY: new and used automobile dealership; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(A)(i) and the Code, §26.3467(a), by failing to ensure that the UST registration and self-certification forms were submitted in a timely manner and by failing to make available to a common carrier a valid, current delivery certificate; PENALTY: \$1,632; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(5) COMPANY: Chevron U.S.A. Inc. dba Chevron Products Company; DOCKET NUMBER: 2004-0425-IWD-E; IDENTIFIER: TPDES Permit Number 01745; LOCATION: Galena Park, Harris

County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 01745, and the Code, §26.121, by failing to comply with permitted effluent limits for total copper and total suspended solids (TSS); and 30 TAC §101.24 and §101.27(c)(1) and the Code, §5.702, by failing to pay air inspection and air emissions fees; PENALTY: \$6,880; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Community Development Institute dba Mertzson Head Start; DOCKET NUMBER: 2004-1509-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1180006, RN101177418; LOCATION: Mertzson, Irion County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c) and THSC, §341.033(d), by failing to take bacteriological samples; PENALTY: \$540; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(7) COMPANY: Corpora Aerial Service, Inc.; DOCKET NUMBER: 2004-1520-PST-E; IDENTIFIER: PST Facility Identification Number 15226, RN101634848; LOCATION: Hearne, Robertson County, Texas; TYPE OF FACILITY: aircraft refueling; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: \$1,600; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: David Dominguez dba D's One Stop; DOCKET NUMBER: 2004-1163-PST-E; IDENTIFIER: PST Facility Identification Number 68904, RN102366697; LOCATION: Big Spring, Howard County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,600; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(9) COMPANY: Encycle/Texas, Inc.; DOCKET NUMBER: 2004-1272-IHW-E; IDENTIFIER: Hazardous Waste Permit Number 50221, RN101448769; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: industrial and hazardous waste management; RULE VIOLATED: 30 TAC §37.404, Hazardous Waste Permit Number 50221, and 40 Code of Federal Regulations §264.147(a), by failing to renew liability coverage for bodily injury and property damage; PENALTY: \$7,280; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(10) COMPANY: Jim Beyer & Edith Beyer Martial Trust dba Erath County Dairy Sales & Livestock Commission; DOCKET NUMBER: 2004-1610-AGR-E; IDENTIFIER: Water Quality Permit Number WQ0003211000, RN102743267; LOCATION: Dublin, Erath County, Texas; TYPE OF FACILITY: concentrated animal feeding operation; RULE VIOLATED: 30 TAC §321.39(f)(28) (now 30 TAC §321.40(k)(2)) and the Code, §26.504(d), by failing to submit a nutrient utilization plan; PENALTY: \$1,100; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Fry Road Municipal Utility District; DOCKET NUMBER: 2004-1406-MWD-E; IDENTIFIER: TPDES Permit Number 11989-001, RN102333762; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11989-001, and the Code, §26.121(a), by failing to comply with their

permit limits for TSS, five-day carbonaceous biochemical oxygen demand, and ammonia-nitrogen; PENALTY: \$3,960; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: GHNA Corporation dba Franky's Exxon; DOCKET NUMBER: 2004-1057-PST-EI IDENTIFIER: PST Facility Identification Number 37514, RN102712825; LOCATION: College Station, Brazos County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$4,750; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: Gulf Coast Waste Disposal Authority; DOCKET NUMBER: 2004-0378-MLM-E; IDENTIFIER: Air Account Number HG02500, TPDES Permit Number 01054; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: industrial wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 01054, and the Code, §26.121(a), by failing to comply with their permit effluent limits; and 30 TAC §§115.142, 116.115(c), and 122.143(4), Air Permit Number 40782, Federal Operating Permit Number O-01708, and THSC, §382.085(b), by failing to comply with the emission limits for volatile organic compounds; PENALTY: \$32,800; ENFORCEMENT COORDINATOR: Larry King, (512) 239-7037; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: H. Richards Oil Company; DOCKET NUMBER: 2004-1489-PST-E; IDENTIFIER: RN101493724; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to observe that the owner or operator had a valid, current delivery certificate; PENALTY: \$500; ENFORCEMENT COORDINATOR: Lori Thompson, (903) 535-5100; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(15) COMPANY: City of Hamlin; DOCKET NUMBER: 2004-0934-PWS-E; IDENTIFIER: PWS Number 1270002, RN101392504; LOCATION: Hamlin, Jones County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113 and THSC, §341.0315(c), by having exceeded the maximum contaminant level (MCL) for total trihalomethanes (TTHM); PENALTY: \$848; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(16) COMPANY: Highway Travel Centers, Inc. dba Highway Travel Center; DOCKET NUMBER: 2004-1551-PST-E; IDENTIFIER: PST Facility Identification Number 15474, RN102485794; LOCATION: Robstown, Nueces County, Texas; TYPE OF FACILITY: truck stop with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), §334.50(b)(1)(A) and (d)(1)(B)(ii), and the Code, §26.3475(c)(1), by failing to conduct effective manual or automatic inventory control procedures and by failing to monitor USTs for releases; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(17) COMPANY: Industrial Fab, Inc.; DOCKET NUMBER: 2004-0733-AIR-E; IDENTIFIER: Air Account Number GB-0630-D, RN100926716; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: pipe and fitting fabrication; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization prior to conducting abrasive sand

blasting; PENALTY: \$2,208; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Kiva Oil Company; DOCKET NUMBER: 2004-1187-AIR-E; IDENTIFIER: Air Account Number EE-0871-D, RN102643483; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by allowing the transfer of gasoline from a storage vessel with a Reid vapor pressure greater than seven pounds per square inch absolute; PENALTY: \$1,632; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: Lighthouse Electric Cooperative, Inc.; DOCKET NUMBER: 2004-1541-PST-E; IDENTIFIER: PST Facility Identification Number 2149, RN102425162; LOCATION: Floydada, Floyd County, Texas; TYPE OF FACILITY: electric cooperative; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i) and (B)(ii) and the Code, §26.346(c)(3) and §26.3467(a), by failing to make available to a common carrier a current delivery certificate and by failing to renew a previously issued delivery certificate; PENALTY: \$1,200; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(20) COMPANY: McCommas LFG Processing Partners, LP dba McCommas LFG Processing Facility; DOCKET NUMBER: 2004-1485-AIR-E; IDENTIFIER: Air Account Number DB4707Q, RN100218569; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: landfill gas processing operation; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit the annual Title V annual compliance certification; 30 TAC §122.145(2)(C) and THSC, §382.085(b), by failing to submit a deviation report; and 30 TAC §101.27(c)(1) and the Code, §5.702, by failing to pay all outstanding air emission fees; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Cecil Wayne Meadlin dba Meadlin Service Center; DOCKET NUMBER: 2004-1568-PST-E; IDENTIFIER: PST Facility Identification Number 54169, RN102644978; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: automotive service center with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance; PENALTY: \$3,200; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Canh M. Nguyen dba Mobil Mart Inc.; DOCKET NUMBER: 2004-1299-PST-E; IDENTIFIER: PST Facility Identification Number 71405, RN102778644; LOCATION: Converse, Bexar County, Texas; TYPE OF FACILITY: convenience store; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance; PENALTY: \$800; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(23) COMPANY: City of Nederland; DOCKET NUMBER: 2004-1308-PWS-E; IDENTIFIER: PWS Number 1230006, RN103098778; LOCATION: Nederland, Jefferson County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(b)(1) and (2), and (f)(4) and (5), and THSC, §341.0315(c), by exceeding the MCL for haloacetic acids (HAA5) and TTHM; PENALTY: \$1,270; ENFORCEMENT COORDINATOR:

Erika Fair, (512) 239-6673; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(24) COMPANY: City of Nixon; DOCKET NUMBER: 2004-1221-MWD-E; IDENTIFIER: TPDES Permit Number 0010234001, RN102181781; LOCATION: Nixon, Gonzales County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0010234001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for TSS; PENALTY: \$2,400; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(25) COMPANY: North Dallas Moving & Storage Company, Inc.; DOCKET NUMBER: 2004-1865-PST-E; IDENTIFIER: PST Facility Identification Number 2405, RN101544781; LOCATION: Carrollton, Dallas County, Texas; TYPE OF FACILITY: vehicle refueling station; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: \$950; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Ogre, Inc. dba The Mur-Tex Company; DOCKET NUMBER: 2004-1596-AIR-E; IDENTIFIER: Air Account Number RB0091A, RN100216340; LOCATION: Amarillo, Randall County, Texas; TYPE OF FACILITY: fiberglass tank manufacturing; RULE VIOLATED: 30 TAC §122.145(2)(B) and §122.146(1) and THSC, §382.085(b), by failing to submit the Title V annual compliance certification; PENALTY: \$1,300; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(27) COMPANY: Overwraps Packaging, LP; DOCKET NUMBER: 2003-1589-AIR-E; IDENTIFIER: Air Account Number DB-1740-Q, RN100804657; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: flexographic printing and packaging; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit the annual compliance certification; PENALTY: \$2,020; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: City of Pearland; DOCKET NUMBER: 2004-1526-MWD-E; IDENTIFIER: TPDES Permit Number 10134008, RN101920007; LOCATION: Pearland, Brazoria County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10134008, and the Code, §26.121(a), by failing to comply with permit effluent limitations for TSS, ammonia nitrogen, and fecal coliform; PENALTY: \$4,200; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: Petroleum Wholesale, L.P. dba Sunmart 133 and 141; DOCKET NUMBER: 2004-0598-MLM-E; IDENTIFIER: PST Facility Identification Numbers 66800 and 66802; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.72(1), by failing to report the discovery of released regulated substances from the USTs; 30 TAC §334.6(a)(2), by failing to notify the TCEQ of construction activity; 30 TAC §334.78(c), by failing to assemble information about the site and nature of a release; and the Code, §26.121(a), by failing to prevent the unauthorized release of petroleum products; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Qazi Trading Corporation dba Dollar Saver Food Mart 12; DOCKET NUMBER: 2004-1280-PST-E; IDENTIFIER: PST Facility Identification Number 46360, RN102833159; LOCATION: Wichita Falls, Wichita County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.72(3)(A), by failing to report the monitoring results associated with statistical inventory reconciliation reports; 30 TAC §334.74, by failing to conduct an investigation and confirmation steps after the discovery of a suspected release; and 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to reconcile inventory control records; PENALTY: \$5,600; ENFORCEMENT COORDINATOR: Sandy Van-Cleave, (512) 239-0667; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(31) COMPANY: City of Rose City; DOCKET NUMBER: 2004-1303-PWS-E; IDENTIFIER: PWS Number 1810139, RN102676269; LOCATION: Vidor, Orange County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(b)(1) and (2) and (f)(4) and (5), and THSC, §341.0315(c), by exceeding the MCL for HAA5 and TTHM; PENALTY: \$655; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(32) COMPANY: Sam Rayburn Water, Inc. dba Lakewood Water System; DOCKET NUMBER: 2004-1508-PWS-E; IDENTIFIER: PWS Number 2030006, RN101189736; LOCATION: near Pineland, San Augustine County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(b)(1) and THSC, §341.0315(c), by exceeding the MCL for TTHM; PENALTY: \$345; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(33) COMPANY: Shani Corporation; DOCKET NUMBER: 2003-0991-PST-E; IDENTIFIER: PST Facility Identification Number 12807, RN101837151; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,600; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(34) COMPANY: George Mashni dba Skywood Food Market; DOCKET NUMBER: 2004-1493-PST-E; IDENTIFIER: PST Facility Identification Number 60519, RN101888733; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,900; ENFORCEMENT COORDINATOR: Cari Bing, (512) 239-1445; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(35) COMPANY: Southwestern Industrial Contractors and Riggers, Inc.; DOCKET NUMBER: 2004-0857-PST-E; IDENTIFIER: PST Facility Identification Number 12052; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(A)(i) and the Code, §26.346(a) and §26.3467(a), by failing to renew a previously issued UST delivery certificate and by failing to make available to a common carrier a valid, current delivery certificate; PENALTY: \$1,440; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(36) COMPANY: SR-KRUPA, Inc. dba SR Food & Gas; DOCKET NUMBER: 2004-1413-PST-E; IDENTIFIER: PST Facility Identification Number 12215, RN102887320; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i) and (B)(ii) and the Code, §26.346(a) and §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate and by failing to renew their delivery certificate; PENALTY: \$1,350; ENFORCEMENT COORDINATOR: Susan Longenecker, (512) 239-0968; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(37) COMPANY: St. Stephens Episcopal School; DOCKET NUMBER: 2004-1487-PST-E; IDENTIFIER: PST Facility Identification Number 72630, RN102888690; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: school with a fleet refueling facility; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and (5)(A)(i) and the Code, §26.346(a) and §26.3467(a), by failing to ensure that the UST registration and self-certification form was fully and accurately completed and by failing to make available to a common carrier a valid, current delivery certificate; PENALTY: \$1,200; ENFORCEMENT COORDINATOR: Lori Thompson, (903) 535-5100; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(38) COMPANY: Summit Resort Developments, Inc. dba Summit Estates at Fischer Texas Unit 1; DOCKET NUMBER: 2004-1381-MLM-E; IDENTIFIER: RN104299466; LOCATION: Fischer, Comal County, Texas; TYPE OF FACILITY: single family residential housing construction site; RULE VIOLATED: 30 TAC §213.23(a)(1)(A) and §281.25(a)(4), by failing to file and receive approval for an Edwards Aquifer contributing zone plan; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Leila Pezeshki, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(39) COMPANY: Younis Khan dba Super Stop 5; DOCKET NUMBER: 2004-1478-PST-E; IDENTIFIER: PST Facility Identification Number 0006519, RN102224938; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,600; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(40) COMPANY: Talley Trucking Company, Inc.; DOCKET NUMBER: 2004-1687-PST-E; IDENTIFIER: PST Facility Identification Number 20503, RN101812626; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$800; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200500224

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 18, 2005

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Texas Health and Human Services Commission

Notification of Consulting Procurement

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the release of its Request for Proposals (RFP) for Independent Verification and Validation (IV&V) Consultant Services for "ensuring the effective performance of the Medicaid Claims/Primary Care Case Management (PCCM) Administrator vendor" (RFP # 529-05-001). HHSC seeks to contract with a single vendor to fulfill the requirements pursuant to this RFP.

The primary objectives for this procurement are to assist HHSC in administering the Medicaid Claims/PCCM Administrator vendor contract by:

Assuring the accurate, complete and timely delivery of services;

Monitoring and reporting on the Medicaid Claims/PCCM Administrator vendor performance, specifically related to quality, risk management and issues resolution; and

Exploring opportunities to maximize efficiency and reduce costs in the administration of the affected State programs.

The selected IV&V Vendor will perform extremely complex information technology (IT) performance evaluations and reviews for computer systems and interfaces and processing functions and will analyze and report on contractor performance metrics to HHSC leadership. The IV&V Vendor will participate in all contract amendment planning and reviews of change order requests. The IV&V Vendor will monitor all contractor project management efforts (PMO) and report any discrepancies, project timeline slippage or concerns to HHSC leadership. The IV&V Vendor will analyze and suggest any performance improvement opportunities that may also justify cost savings and improve contractor and State efficiency.

The RFP is located in full on HHSC's Business Opportunities Page at http://www.hhsc.state.tx.us/about_hhsc/BUSOpp/BO_opportunities.html. HHSC also posted notice of the procurement on the Texas Marketplace on January 28, 2005.

The successful contractor will be expected to provide the services described in the RFP beginning with the date of award through August 31, 2006.

Health and Human Services Commission's Sole Point-Of-Contact For Procurement

Tim Seelig

Procurement Project Manager

Health and Human Services Commission

P.O. Box 85200-5200

11209 Metric Boulevard, Bldg. H

Austin, TX 78708-5200

(512) 491-1328

tim.seelig@hhsc.state.tx.us

A portion of the services described in this RFP comprise automated information services, including but not limited to systems maintenance and modifications. Before the effective date of the Contract, the successful Vendor must be a Catalogue Information Systems Vendor (CISV) as defined in Chapter 2157 of the Texas Government Code, and certified by the Texas Building and Procurement Commission. If your company is not currently an approved CISV, you may download the Centralized Master Bidders List (CMBL) and CISV applications at the following address: <http://www.tbpc.state.tx.us/stpurch/cisv.html>.

All questions regarding the RFP must be sent in writing to the above-referenced contact by 5:00 p.m. Central Time on February 10, 2005. HHSC will post all written questions received with HHSC's responses on its website on February 18, 2005, or as they become available. A prospective vendor must submit a Notice of Intent to Propose (see page 2 of the RFP) to the HHSC Point of Contact identified in Section 1.8 of the RFP no later than February 25, 2005. This is a mandatory requirement. A vendor that does not submit a notice of intent to propose **may not** submit a proposal; however, a vendor that submits a notice of intent to propose is not required to submit a proposal. All proposals must be received at the above-referenced address on or before 5:00 p.m. Central Time on March 10, 2005. Proposals received after this time and date will not be considered.

All proposals will be subject to evaluation based on the criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

TRD-200500252

Carey Smith

General Counsel

Texas Health and Human Services Commission

Filed: January 19, 2005

Department of State Health Services

Notice of Agreed Order with Glazier Medical, P.A., dba Advanced Foot Care

On January 10, 2005, the Radiation Program Officer, Department of State Health Services (department), approved the settlement agreement between the department and Glazier Medical, P.A., dba Advanced Foot Care (Registrant--R21949) of El Paso. A total administrative penalty in the amount of \$2,000 was assessed the registrant for violations of 25 Texas Administrative Code Chapter 289. Of the total administrative penalty, \$1,000 will be probated for a period of one year, and will be forgiven if the registrant complies with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200500253

Cathy Campbell

Director, Legal Services

Department of State Health Services

Filed: January 19, 2005

Notice of Agreed Order with Harris Methodist Northwest Hospital

On January 11, 2005, the Radiation Program Officer, Department of State Health Services (department), approved the settlement agreement between the department and Harris Methodist Northwest Hospital (Registrant--M00170) of Azle. A total administrative penalty in the amount of \$1,000 was assessed the registrant for violations of 25 Texas Administrative Code Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange

Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200500254

Cathy Campbell

Director, Legal Services

Department of State Health Services

Filed: January 19, 2005

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on HVJ Associates, Inc.

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to HVJ Associates, Inc. (licensee--L03813) of Houston. A total penalty of \$4,000 is proposed to be assessed the company for alleged violations of 25 Texas Administrative Code Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200500255

Cathy Campbell

Director, Legal Services

Department of State Health Services

Filed: January 19, 2005

Texas Higher Education Coordinating Board

Notice of Contract Award

Pursuant to Chapter 2254, Chapter B, the Texas Higher Education Coordinating Board announces this notice of consulting contract award.

The notice of request for proposals (#05-001) was published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11795).

The consultant will assist the Coordinating Board with the administrative oversight of the various teacher education activities at the member institutions of Texas Association of Developing Colleges (TADC) by: (1) facilitating and coordinating a collaborative strategic planning process to involve TADC college administration in planning for collaborative distance education, upgrading of technology, curriculum development and redesign and improvement of ExCET preparation; (2) working in collaboration with the Coordinating Board and TADC college administration to identify training needs of college faculty in the centers for teacher education in the areas related to distance education, curriculum development and improvement of ExCET preparation; (3) facilitating and coordinating college administration and faculty professional development workshops to meet areas of need for delivery of distance education, curriculum development and redesign and improvement of ExCET preparation; and (4) reporting progress in TADC teacher education enrollment, level of participation in the distance education program, successful student placements, and other evaluative measures.

The contract was awarded to Ms. Genevieve Brembry, Executive Director, Texas Association of Developing Colleges, Inc., 1140 Empire Central, Suite 550, Dallas, TX 75247. The total amount of this contract is not to exceed \$45,000.00.

The term of the contract is January 10, 2005 through August 31, 2005. Final reports for each phase of the project will be presented on the

following schedule: Phase I - February 2, 2005; Phase II - March 18, 2005; Phase III - July 29, 2005.

TRD-200500165

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Filed: January 12, 2005

Texas Department of Housing and Community Affairs

Notice of Funding Availability

HOME Investment Partnerships Program

PY 2005 Contract for Deed Conversion Funding Cycle

The Texas Department of Housing and Community Affairs (TDHCA) HOME Investments Partnerships Program Notice of Funding Availability (NOFA) for the PY 2005 Contract for Deed Conversion Funding Cycle that was published in the *Texas Register* on January 21, 2005 contained an error. The sentence, "Eligible homeowners must be permanent residents of the United States" should be deleted and substituted with the following:

It is the policy of TDHCA to not require its nonprofit recipients of funds to verify, as a condition of receiving federal funds, the citizenship or immigration status of applicants for funds. This policy is subject to change if the U.S. Department of Housing and Urban Development revises its policy.

TRD-200500251

Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Filed: January 19, 2005

Notice of Public Hearing

Notice of Public Hearing for the PY 2005 Weatherization Assistance Program State Plan/Application

The Texas Department of Housing and Community Affairs (TDHCA) announces that a public hearing will be held to receive comments on the draft program year 2005 Texas Weatherization Assistance Program State Plan. Texas will receive an allocation of \$5,599,993 for program year 2005. The allocation is provided to the state by the U. S. Department of Energy (DOE).

The public hearing will be held at 1:30 p.m. on Friday, February 11, 2005 in Room #103, William P. Clements, Jr. Building, 300 W. 15th St., Austin, Texas. At the hearing, a representative from TDHCA will describe changes to the Weatherization Assistance Program (WAP) and the proposed use of the United States Department of Energy funds for program year 2005, which will be for the period of April 1, 2005 to March 31, 2006. A work group meeting (included program subrecipients and other interested parties) was held to review, obtain input, and gain consensus on possible changes to be made to the Plan. The issues discussed during the workgroup meeting were allocation of funds, client education, DOE notification, EASY Audit, modifying desired air exchange and savings-to-investment ratio requirements, health and safety, and electric base load measures. The changes that were agreed upon during that meeting were incorporated into this draft plan.

Local officials and citizens are encouraged to participate in the hearing process. Written and oral comments received will be used to finalize the program year 2005 Texas Weatherization Assistance Program State Plan and Application. Written comments from those who cannot attend the hearing in person may be provided by the close of business at 5:00 p.m. on February 11, 2005, to Ms. Lolly Herrera, Senior Planner, Energy Assistance Section, Texas Department of Housing and Community Affairs, 507 Sabine, Suite 600, Austin, Texas 78701 or by electronic mail to Lolly.Herrera@tdhca.state.tx.us or by fax to (512) 475-3935. A copy of the proposed Draft Plan may be obtained, after January 31, 2005, through TDHCA's web site, <http://www.tdhca.state.tx.us/ea.htm> or by calling Ms. Herrera at (512) 475-0471 or by writing to Ms. Herrera at the TDHCA address given above.

Individuals who require auxiliary aids or services for this meeting should contact Ms. Gina Esteves, ADA responsible employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Lolly Herrera, (512) 475-0471 at least three days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-200500247

Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Filed: January 19, 2005

Houston-Galveston Area Council

Request for Proposals

The Houston-Galveston Area Council solicits proposals to conduct a Return on Investment analysis on its Work School Program operated in conjunction with The University of Texas Medical Branch at Galveston. The project entails collecting and analyzing program cost data from UTMB and four additional participating hospitals and one community college regarding employees enrolled in the Work School program to advance their career opportunities. **The deadline for receiving responses to this request is 5:00 p.m. Central Standard time on Friday, February 18, 2005. Late proposals will not be accepted, there will be no exceptions.** Prospective bidders may download the proposal package from The WorkSource web site beginning at 12:00 noon on Tuesday, January 11, 2005. To access the package electronically, go to the Main Page of www.theworksource.org and click on "Special Announcements." H-GAC will fill requests for hard copies of the proposal package beginning on January 11, 2005. Questions about the proposal package may be directed to Carol Kimmick at 713-627-3200 or carol.kimmick@theworksource.org.

TRD-200500172

Jack Steele

Executive Director

Houston-Galveston Area Council

Filed: January 12, 2005

Request for Proposals

The Houston-Galveston Area Council (H-GAC) solicits proposals from individuals and organizations interested in providing technical assistance for the Gulf Coast Workforce Board and staff. The Workforce Board's system offers service for the more than 95,000 businesses and 4.5 million residents of a 13-county area that includes Houston, Harris County, and the twelve surrounding counties. Prospective bidders may obtain a copy of the Request for Proposals online at <http://www.theworksource.org> or by contacting Carol Kimmick or Mary Soria at 713.627.3200 or by sending email to carol.kimmick@h-gac.com. Responses are due at H-GAC offices by 12:00 noon on Monday, January 31, 2005. Late proposals will not be accepted. There will be no exceptions.

TRD-200500221

Jack Steele

Executive Director

Houston-Galveston Area Council

Filed: January 18, 2005

Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of PEROT SYSTEMS BUSINESS PROCESS SOLUTIONS, INC., a domestic third party administrator. The home office is DALLAS, TEXAS.

Application for incorporation in Texas of SUPERIOR BENEFITS ADMINISTRATORS GROUP, LLC., a domestic third party administrator. The home office is HOUSTON, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200500243

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: January 19, 2005

Public Utility Commission of Texas

Notice of Application for Certificate of Convenience and Necessity for a Proposed Transmission Line In Wood, Franklin and Hopkins Counties, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on January 12, 2005, for a certificate of convenience and necessity for a proposed transmission line in Wood, Franklin and Hopkins Counties, Texas.

Docket Style and Number: Application of Southwestern Electric Power Company (SWEPCO) for a Certificate of Convenience and Necessity (CCN) for a Proposed Transmission Line in Wood, Franklin and Hopkins Counties, Texas. Docket Number 30128.

The Application: The project is designated the Winnsboro to North Mineola 138-kV Transmission Line Project. SWEPCO proposes to construct a 138-kV transmission line approximately 24 miles in length, and approximately 8.5 miles wide, encompassing approximately 122,700 acres, primarily in Wood County, with small portions in Franklin and Hopkins Counties. It includes the cities of Winnsboro,

Quitman, and Mineola. The new transmission line's endpoints are the existing SWEPCO Winnsboro and North Mineola Substations. The estimated cost for the project is \$9,346,000 for transmission facilities and \$614,000 for substation facilities. The estimated date to energize facilities is November 2007.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is February 28, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735- 2989. All comments should reference Docket Number 30128.

TRD-200500217

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: January 14, 2005

Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On January 11, 2005, HJN Telecom, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60202. Applicant intends to relinquish its certificate.

The Application: Application of HJN Telecom, Incorporated to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 30643.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 2, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30643.

TRD-200500174

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: January 13, 2005

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 10, 2005, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of Infotelecom, LLC for a Service Provider Certificate of Operating Authority, Docket Number 30642 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance, and wireless services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 2, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30642.

TRD-200500142

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: January 12, 2005

Texas Racing Commission

Notice of Application Period

The Texas Racing Commission announces that the Commission will accept applications for a Class 2 horse racetrack license in Hildalgo County. Under the Texas Racing Commission rules, the Commission may designate an application period of not more than 60 days in which applications for a racetrack license may be filed. On August 12, 2004, the Commission established one 60-day application period. The application period begins at 8:00 a.m., April 1, 2005, and ends at 5:00 p.m., May 31, 2005. For more information, contact Nash J. Gonzales, General Counsel, Texas Racing Commission, P.O. Box 1280, Austin, Texas 78711-2080, (512) 833-6699, fax (512) 833-6907, or 8505 Cross Park, Dr., #110, Austin, Texas 7754-4594.

TRD-200500181

Nash J. Gonzales

General Counsel

Texas Racing Commission

Filed: January 14, 2005

Texas Residential Construction Commission

Notice of Applicant for Registration as Arbitrator

The commission adopted rules regarding the registration and certification of arbitrators at 10 TAC §§ 318.20-318.32. The new rules were adopted under new Chapter 417, Property Code (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01), which provides that the commission establish eligibility requirements and procedures for a person to be certified by the commission as a residential construction arbitrator and that the commission maintain a list of certified arbitrators and make that list available to the public. The commission rules can be found on the commission's website at www.trcc.state.tx.us

10 TAC §318.22 requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become registered under this subchapter. The commission will accept public comment on each application for twenty-one (21) days after the date of publication of the notice.

Pursuant to 10 TAC § 318.22 the commission hereby notices the application of:

G. Maynard Green, 510 N. Valley Mills, Suite 500, Waco TX 76710. Mr. Green has asserted that he meets the requirements of certification and that he has at least five years of experience conducting arbitrations between homeowners and builders involving construction defects. Mr.

Green has notified the commission that Woody R. Butler of Woody Butler Homes, Inc. is a person with whom Mr. Green has a direct or indirect personal or business relationship that could reasonable be considered to create a conflict of interest for Mr. Green if he were to serve as an arbitrator in a dispute involving Mr. Butler or Woody Butler Homes, Inc.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, The Texas Residential Construction Commission, P.O. Box 13144, Austin, TX 78711-3144. Comments regarding this application will be accepted for twenty-one days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200500227

Susan Durso

General Counsel

Texas Residential Construction Commission

Filed: January 18, 2005

Office of Rural Community Affairs

Request for Proposals for Medically Underserved Community-State Matching Incentive Program

The Office of Rural Community Affairs (ORCA) is issuing a Request for Proposals ("RFP") for the Medically Underserved Community-State Matching Incentive Program. The purpose of this RFP is to provide the applicant with the information necessary to apply for matching state grant funds under the provisions of this program.

The purpose of this program is to increase the number of physicians providing primary care in medically underserved communities, particularly rural.

USE OF FUNDS: The funds can be used to establish a medical office and ancillary facilities for diagnosing and treating patients. The optimum use of funds would be for the purchase of equipment and furnishings that would establish a new practice site. The site will continue to serve the primary care needs of the community beyond the grant period, and the physician will agree to practice for a minimum of two years.

AMOUNT OF AWARDS: The funding available for support of this program during FY 2005 is \$250,000. Approximately 10 projects will be funded. Under the requirements of this program the state grants funds of up to \$25,000 to match the contributions by community groups to cover start-up costs for new physicians.

ELIGIBLE APPLICANTS: An eligible community must be in an underserved area as determined by the U.S. Department of Health and Human Services or the Department of State Health Services. The community must make a commitment of \$15,000 - \$25,000 in contributions toward the project and contract with a physician eligible to participate in this program.

Eligible physicians include those in family/general practice, general pediatrics, general internal medicine, or general obstetrics/gynecology. The physician must be licensed to practice in the State of Texas, have completed an accredited residency program, and have contracted with the community to provide full-time primary care for at least two years. A physician who completed residency within the last ten years will be given priority consideration.

EVALUATION AND SELECTION: ORCA will prioritize the eligible communities to assure that the neediest are provided grants. The prioritization process will quantify indicators of need that may include, but are not limited to, the following: no practicing primary care physicians; only one primary care physician and a population of at least 2,000;

no federally or state-funded primary care clinic; no practicing physician assistants or nurse practitioners; the participating physician will be the only physician practicing in one of the primary care specialties; a large minority population, if the participating physician is a member of the same minority group; designation by the United States Department of Health and Human Services as a primary care Health Professional Shortage Area (HPSA) for at least the last five years; a population-to-primary care provider ratio in the top 25% of all counties in the state; poverty rates above the state average; and median family incomes at least 25% below the state average.

DEADLINE: Applications are available January 12, 2005. Completed applications are due by May 31, 2005. Announcement of the selected applicants will be made by July 31, 2005.

CONTRACT PERIOD: The budget period for applications funded under this RFP will be September 1, 2005 - August 31, 2006.

CONTACT PERSON: To obtain the application, please contact:

MUC-SMIP Program Administrator

Office of Rural Community Affairs

P.O. Box 12877

Austin, Texas 78711

(512) 936-6701

e-mail: orca@orca.state.tx.us

TRD-200500176

Charles Stone

Executive Director

Office of Rural Community Affairs

Filed: January 13, 2005



Request for Proposals for Rural Health Facility Capital Improvement Loan Fund

The Office of Rural Community Affairs is issuing a Request for Proposals ("RFP") for the Rural Health Facility Capital Improvement Loan Fund. The purpose of this RFP is to provide the applicant with grant funding for capital improvement projects under the endowment fund created by House Bill 1676.

USE OF FUNDS: Funds are awarded for a specifically defined purpose and may not be used for any other project. Funds may be used to make capital improvements to existing facilities, construct new health facilities and to purchase capital equipment, including information systems hardware and software.

AMOUNT OF AWARD: Funds are available for projects of up to \$50,000. Funding will total approximately \$2,100,000, depending on the amount received from the Comptroller's Office. A 10% match requirement is in effect.

ELIGIBLE APPLICANTS: Eligible applicants include rural public and non-profit hospitals located in counties of less than 150,000 persons. Hospitals awarded funds during FY 2004 will not be eligible to apply.

EVALUATION AND SELECTION: Applications are initially screened for eligibility and completeness. Applications that do not meet the requirements in this RFP, may not be considered for review and the applicant will be notified in writing. After the initial screening, the applications will be scored by the scoring committee. The Executive Director will make a final determination.

DEADLINE: Completed applications are due by March 4, 2005. Announcement of the selected applicants will be made by March 25, 2005.

CONTRACT PERIOD: The first budget period for the applications funded under this RFP will begin April 1, 2005 and continue for 6 months. The second budget period for the applications funded under this RFP will begin June 1, 2005 and continue for 6 months. The third budget period for the applications funded under this RFP will begin August 1, 2005 and continue for 6 months.

CONTACT PERSON: To obtain the application, please contact:

Capital Improvement Fund Administrator

Office of Rural Community Affairs

P.O. Box 12877

Austin, Texas 78711

(512) 936-6701 or (800) 544-2042

e-mail: orca@orca.state.tx.us

TRD-200500177

Charles Stone

Executive Director

Office of Rural Community Affairs

Filed: January 13, 2005



Texas Department of Transportation

Request for Proposal for Aviation Engineering Services

The City of McKinney, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT, Aviation Division will solicit and receive proposals for professional aviation engineering design services described in this notice.

Airport Sponsor: City of McKinney, Collin County Regional Airport. **TxDOT CSJ No.:** 0518KINNY **Scope:** Provide engineering/design services to Overlay cross TWs "B", "C", "D", & "E", reconstruct section of TW "A" and overlay TW "A."

Future items within the next five years may include: rehabilitation of runway, environmental assessment, master plan and airport layout plan revisions and updates; CFR Part 150 noise exposure map updates; land surveys; construct replacement runway; grading, drainage and fencing for replacement runway; rehabilitate parallel taxiways; construct new airport access road; rehabilitate taxiways and aprons; construct aircraft parking aprons; construct electrical vault; electrical and drainage improvements; pavement and drainage construction; pavement rehabilitation, maintenance, striping and testing; airfield lighting and electrical installation, landside and airside signage; airfield safety and security enhancements to include electronic, visual, lighting and sensor; re-location of all components of the Instrument Land System (ILS), VASI and PAPI systems, and ASOS system.

Other services may include: provision of engineer estimates for all airport projects; construction contract administration to include project management and construction observation; improvements and development to Aviation/Commercial/Industrial development areas.

The DBE goal is set at 9%. TxDOT Project Manager is Alan Schmidt, P.E.

TxDOT Planning Project Manager is Bruce Ehly.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online by selection "Collin County Regional Airport" at:

www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm

The proposal should address a technical approach for the current scope only. Firms shall use page four, Recent Airport Experience, to list relevant past projects for both current and future scope. Firms may add two additional optional summary pages to provide their approach for the future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address:

<http://www.dot.state.tx.us/avn/avn550.doc>

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Firms are encouraged to add two additional optional summary pages to provide their approach for the future scope.

Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

(Attention: To ensure utilization of the latest version of Form 550, firms are encouraged to download Form 550 from the TxDOT website. Utilization of Form 550 from a previous download may not be the exact same format. Form 550 is an MS Word Template).

Four completed, unfolded copies of Form AVN 550 must be postmarked by U. S. Mail by midnight Friday, February 18, 2005. (CDST). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on Tuesday, February 22, 2005; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m., Tuesday, February 22, 2005 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The consultant selection committee will be composed of local government members.

The final selection by the sponsor's committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at:

www.dot.state.tx.us/business/avnconsultinfo.htm

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or Alan Schmidt, P.E., Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200500231

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: January 18, 2005

University of Houston

Request for Proposal

In compliance with Chapter 2254, Texas Government Code, the University of Houston furnishes this notice of request for proposal. The University of Houston seeks proposals from a firm to provide consulting services to assist Human Resources in developing effective performance appraisal formats and exploring the use of "competencies" to tie together hiring, compensation, performance review, career development and training. The University invites firms with demonstrated expertise, experience, and success in performance appraisals and competency management to submit comprehensive responses to this request for proposal. Interested parties are invited to express their interest and describe their capabilities on or before February 28, 2005.

The term of the contract is to be for a five and one half (5 1/2) months period beginning on or about March 15, 2005 and ending August 31, 2005, subject to two (2) renewal options, each of six (6) months' duration. Further information can be obtained from Karl Sparks (713) 743-7297. All proposals must be specific and must be responsive to the criteria set forth in this request.

SCOPE OF WORK: Consulting services to assist Human Resources and an advisory group/task force in: (i) Developing an effective performance appraisal format - short term and long term, and (ii) Exploring the use of "competencies" to tie together hiring, compensation, performance review, career development and training. Deliverables will include: (a) Short term performance appraisal template, (b) Long term performance appraisal template, and (c) Recommendation regarding effectively developing and using competencies in hiring, compensation, performance reviews and career development/training. The objectives to be accomplished will be to: (1) Enhance the effectiveness of the performance appraisal instrument, and (2) Clarity for staff regarding what it takes for career satisfaction and progress (career ladders and competency attainment).

INFORMATION ABOUT THE UNIVERSITY OF HOUSTON: The University is the largest Texas state institution of higher education located in an urban, metropolitan environment. As a premier research and teaching institution, our campus serves nearly 36,000 students. The University has 14 colleges and offers a host of undergraduate, graduate, and professional degree programs in a variety of disciplines; courses are conducted throughout most of the calendar year. The University ranks in the top 1 percent in the nation for its student enrollment size and is 12th in the nation for its international student enrollment. Approximately 89% of the students come from within the state of Texas. Moreover, of our student body, approximately 65% come from Harris County, which is the county in which the University of Houston is located.

BACKGROUND: The University of Houston installed a new compensation plan in 1997 and uses a point-factor system of classification (Wyatt). Since then, a number of exceptions have been made (at the vice presidential level), new employees have been hired above the salaries of existing employees (with similar jobs and experience), and the number of job classifications has expanded significantly. Salary increase funds have been minimal in the most recent years, due to reduced state funding and the desire to keep tuition rates affordable for students. In order to recognize performance and/or retain staff, we suspect supervisors may have resorted to reclassification as a means to justify an increase

(promotional or equity). We also suspect supervisors may have inflated performance appraisals to ensure merit dollars, when available. The current appraisal format resulted from the work of an advisory group and was implemented in the year 2000. Training and staff development as a Human Resources function has existed for many years; however there has been high turnover in the manager's position. There is a current executive focus to provide career/professional development opportunities, management development training and funding for academic classes. Human Resources has been tasked with coordinating campus training providers, building career paths and identifying requisite training for progress along each path. The State of Texas has developed policies to encourage the use of Historically Underutilized Businesses (HUBS), and accordingly, UHS makes every effort to show good faith in the utilization of HUBS in the provision of contracts for commodities and services. UHS has established a goal of thirty percent (30%) of the total value of each program's service contracts to be awarded to qualified Hubs. This can be achieved by contracting directly with HUBS or indirectly through sub-contracting opportunities. Each Contractor shall exhibit a good faith effort to utilize HUBS as suppliers or sub-contractors, whenever possible.

GENERAL INSTRUCTIONS: Submit one (1) original, three (3) paper copies of your proposal and a CD version in a sealed envelope to: the Human Resources Department, University of Houston, 341 McElhinney Hall, Houston, Texas 77204-5009 before 5:00 P.M. February 28, 2005. The original shall be prepared on a word processor and formatted in at least 11-point-font that is clearly readable. The paper copies shall be of good, readable quality.

COMPLIANCE WITH RFP REQUIREMENTS: By submission of a proposal, a submitter agrees to be bound by the requirements set forth in this RFP. The University, at its sole discretion, may disqualify a proposal from consideration if the University determines a proposal is non-responsive and/or non-compliant, in whole or in part, with the requirements set forth in this RFP.

SIGNATURE, CERTIFICATION OF SUBMITTER: The original paper proposal must be signed and dated by a representative of the submitter who is authorized to bind the submitter to the terms and conditions contained in this RFP and to comply with the information submitted in the proposal. Each submitter certifies to both (1) the completeness, veracity, and accuracy of the information provided in the proposal and (2) the authority of the individual whose signature appears on the proposal to bind the submitter to the terms and conditions set forth in this RFP. Proposals submitted without the required signature shall be disqualified.

OWNERSHIP OF PROPOSALS: All proposals become the physical property of the University upon receipt.

USE, DISCLOSURE OF INFORMATION: Submitters acknowledge that the University is an agency of the State of Texas and is, therefore, required to comply with the Texas Public Information Act. If a proposal includes proprietary data, trade secrets, or information the submitter wishes to except from public disclosure, then the submitter must specifically label such data, secrets, or information as follows: "PRIVILEGED AND CONFIDENTIAL -- PROPRIETARY INFORMATION." To the extent permitted by law, information labeled by the submitter as proprietary will be used by the University only for purposes related to or arising out of the (1) evaluation of proposals, (2) selection of a submitter pursuant to the RFP process, and (3) negotiation and execution of a Contract, if any, with the submitter selected.

RESCISSION OF PROPOSAL: A proposal can be withdrawn from consideration at any time prior to expiration of the deadline for proposals pursuant to a written request sent to the Treasurer of the University.

REQUEST FOR CLARIFICATION: The University reserves the right to request clarification of any information contained in a proposal.

ADDENDA TO THE RFP: Each submitter will be provided with copies of University-approved addenda, including amendments, if any, to the RFP. If and as necessary, as determined by the University, submitters will, in turn, be allowed time to revise or supply additional information in response to such addenda.

PRE-PROPOSAL CONFERENCE: There will not be a pre-proposal conference.

COMMUNICATIONS WITH UNIVERSITY PERSONNEL: Except as provided in this RFP and as is otherwise necessary for the conduct of ongoing University business operations, submitters are expressly and absolutely prohibited from engaging in communications with University personnel who are involved in any manner in the review and/or evaluation of the proposals; selection of a submitter; and/or negotiations or formalization of a contract. If any submitter engages in conduct or communications that the University determines are contrary to the prohibitions set forth in this section, the University may, at its sole discretion, disqualify the submitter and withdraw the submitter's proposal from consideration.

EVALUATION OF PROPOSALS: The proposals will be reviewed in accordance with the criteria set forth in this RFP. Proposals that are (1) incomplete, (2) not properly certified and signed, (3) not in the required format, or (4) otherwise non-compliant, in whole or in part, with any of the requirements set forth in this RFP may be disqualified by the University.

DISCUSSIONS WITH SUBMITTERS: The University may conduct discussions and/or negotiations with any submitter that appears to be eligible for award ("Eligible Submitter") pursuant to the selection criteria set forth in this RFP. In conducting discussions and/or negotiations, the University will not disclose information derived from proposals submitted by competing submitters, except as and if law requires disclosure.

MODIFICATION OF PROPOSALS: All Eligible Submitters will be afforded the opportunity to submit best and final proposals if (a) negotiations with any other submitter result in a material alteration to the RFP and (b) such material alteration has a cost consequence that could alter the submitter's quotations regarding rates for Services.

SELECTION OF PROPOSER: The submitter selected for award will be the submitter whose proposal, as presented in response to this RFP and as determined by the University in accordance with the evaluation criteria set forth in this RFP, to be the most advantageous to the University. Submitters acknowledge that the University is not bound to accept the lowest-priced proposal.

EVALUATION OF PROPOSALS: Submission of a proposal indicates the submitter's acceptance of the evaluation process set forth in this RFP and the submitter's acknowledgement that subjective judgments must be made by the University in regard to the evaluation process.

CRITERIA FOR EVALUATION: Evaluation of proposals and award to the Selected Submitter will be based on the following factors, as weighted and listed as follows: (1) Five (5) or more years of compensation consulting experience addressing best practices in the area of total compensation and competencies, (2) Completeness of responses to the above parameters (Scope of Work, Deliverables, Objectives). Respondents shall address each to include an estimate of effort and a time line, (3) Three or more directly related references, including at least one from higher education. References shall include a point of contact and means thereof, (4) Estimate of cost(s). These are to be broken down into deliverable components, (5) Evidence statement regarding use of

HUBS, and (6) The University may also consider other information it deems relevant to the selection of a consultant.

CONSIDERATION OF ADDITIONAL INFORMATION: The University reserves the right to ask for and consider any additional information deemed beneficial to the University in evaluation of the proposals.

TERMINATION: This Request for Proposal in no manner obligates the University of Houston University to the eventual purchase of any services described, implied or which may be proposed until confirmed by a written consultant contract. Progress towards this end is solely at the discretion of the University of Houston and may be terminated without penalty or obligation at any time prior to the signing of a contract. The University of Houston reserves the right to cancel this RFP at any time, for any reason and to reject any or all proposals.

TRD-200500179

Brian S. Nelson

Executive Director and Associate General Counsel

University of Houston

Filed: January 13, 2005

University of North Texas

Public Notice-Award of Major Consulting Contract

Description of Activities Consultant Will Conduct:

To help in the recruitment of New Dean of College of Business Administration and Dean of the School of Visual Arts.

Name and Business Address of Consultant:

Korn/Ferry International

2100 McKinney Avenue, Suite 1800

Dallas, Texas 75201

Total Value and Beginning and Ending Dates of Contract:

Value: \$ 120,000.00

Beginning Date: January 6, 2005

Ending Date: Upon the hiring of the Deans

Dates on Which Documents, Films, Recordings, or Reports that Consultant is required to present are due:

Date: Various dates

TRD-200500218

Sandy Shelton

Director of Payment and Purchasing Services

University of North Texas

Filed: January 14, 2005

Texas Workers' Compensation Commission

Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the *Procedures and Standards for the Medical Advisory Committee*. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee representative vacancies:

Primary

* Public Health Care Facility

Alternate

* Public Health Care Facility

* Dentist

* Pharmacist

* Podiatrist

* Employer

* Employee

* General Public Representative 1

* General Public Representative 2

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings. Voluntary service on the Medical Advisory Committee is greatly appreciated by the TWCC Commissioners and the TWCC Staff.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at <http://www/twcc.state.tx.us>. Click on 'Commission Meetings', then 'Medical Advisory Committee'. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or Ruth Richardson, Manager of Monitoring, Analysis and Education, Medical Review Division at 512-804-4850.

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

LEGAL AUTHORITY The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment: Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The TWCC Commissioners designate the chairman of the MAC. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman: Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division; prior to meetings, confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate:

- a. Preparation of a suitable agenda.
- b. Planning MAC activities.
- c. Establishing meeting dates and calling meetings.
- d. Establishing subcommittees
- e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

SUBCOMMITTEES The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200500228

Susan Cory

General Counsel

Texas Workers' Compensation Commission

Filed: January 18, 2005

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How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the TAC.

The TAC volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the TAC, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the TAC scheme, each section is designated by a TAC number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

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